

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

9

11

12

13

17

21

22

23

24

25

1 (Proceedings heard in open court:)

2 THE CLERK: 03 CR 978, USA vs. Abdelhaleem Ashqar.

3 THE COURT: Good morning.

4 MR. SPIELFOGEL: Good morning, Judge.

5 MR. SCHAR: Good morning, Judge. Reid Schar and

6 Joseph Ferguson on behalf of the United States.

7 MR. SPIELFOGEL: Bill Moffitt and Keith Spielfogel on

8 behalf of Dr. Ashqar who is here.

9 MS. RICE: And Kelly Rice on behalf of probation.

10 Good morning.

11 THE COURT: Good morning.

12 We're here for continuation of sentencing. Are you

13 ready to proceed?

14 MR. SCHAR: Yes, Judge, we are.

15 THE COURT: Mr. Moffitt, are you ready to proceed?

16 MR. MOFFITT: Yes, ma'am.

17 THE COURT: Mr. Moffitt, would you please come to the

18 podium with your client.

19 Dr. Ashqar should be up here, as well.

20 THE DEFENDANT: Good morning.

21 THE COURT: Good morning.

22 I have the presentence investigation report before

23 me. Mr. Moffitt, have you reviewed the presentence

24 investigation report and reviewed it with your client?

25 MR. MOFFITT: Yes, we have.

1 THE COURT: Dr. Ashqar, have you reviewed the
2 presentence investigation report and reviewed it with
3 Mr. Moffitt and/or Mr. Spielfogel?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Okay. Other than the guideline
6 objections that were submitted to the Court in your various
7 submissions, including your August 24th submission and your
8 reply to that lengthy submission, do you have any comments,
9 corrections or objections to the presentence investigation
10 report?

11 MR. MOFFITT: Not for -- not on the -- not Rule
12 32-type objections, your Honor.

13 THE COURT: Okay.

14 So, nothing else other -- I know the guidelines are
15 all in dispute, and I will get to those calculations
16 momentarily, but nothing in terms of the factual predicate,
17 the other information that's in here.

18 MR. MOFFITT: No, no, nothing else to the historical
19 and biological information concerning Dr. Ashqar.

20 THE COURT: Okay.

21 Mr. Schar, on behalf of the government, do you have
22 any comments, corrections or objections other than the
23 guidelines, which we'll get to, but do you have any comments,
24 corrections or objections?

25 MR. SCHAR: No, Judge.

1 THE COURT: All right. And Dr. Ashqar, other than
2 what your lawyer has submitted to the Court in the submissions
3 which address the guideline calculations which I will get to
4 in a moment, do you have any objections or corrections to the
5 presentence investigation report?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Let's turn to the guideline calculation.

8 The base offense level. I have read your submissions
9 thoroughly. Your objection, Mr. Moffitt, to the base offense
10 level is overruled. The base offense level under 2J1.2 for
11 obstruction of justice is a level 14.

12 You have -- 2J1.11 governs contempt and the
13 defendant's convictions here were on Count Four, contempt, and
14 Count Five, obstruction.

15 2J1.1 cross-references 2X5.1, which provides the
16 Court should apply the most analogous guideline where no
17 guideline has been expressly promulgated for the offense.

18 Your objection was to applying the obstruction of
19 justice base offense level here.

20 The application notes to the guideline make clear
21 that in certain cases, the offense conduct will be
22 sufficiently analogous to obstruction of justice for that
23 guideline to apply.

24 The Seventh Circuit also made this clear in U.S. vs.
25 Alwan, 279 F.3d 431 at 440, a 2002 Seventh Circuit, where it

1 specifically noted that "2J1.1 recognizes that in some cases,
2 a defendant's conduct may justify the application of 2J1.2 for
3 obstruction of justice. This is one of those cases."

4 It's clear from the evidence at trial, including the
5 defendant's conviction on the obstruction of justice count,
6 that Dr. Ashqar's refusal to testify before the grand jury was
7 an effort to obstruct an ongoing criminal investigation into
8 potential criminal activities by various individuals and
9 organizations.

10 I reject your argument that his failure to appear --
11 that failure to appear is more analogous here and should
12 provide the base offense level because he did appear here and
13 he refused to testify, and the jury's verdict certainly
14 supports it.

15 I am adopting the probation officer's findings with
16 respect to the base offense level, which is a 14.

17 I also want to add -- first of all, I want to
18 compliment Officer Rice on her thorough and detailed report
19 before I go any further, especially for somebody who did not
20 sit through the lengthy trial in this case. I commend you for
21 the thorough report that you have provided --

22 MS. RICE: Thank you.

23 THE COURT: -- to the Court and to the parties,
24 Officer Rice.

25 MS. RICE: Thank you, your Honor.

1 THE COURT: Before I go further on the guidelines, I
2 want to address some general objections, Mr. Moffitt, that you
3 have made to all of the guideline applications, and then I'll
4 go back to the specific applications and specific
5 enhancements.

6 You have, in your submission to the Court, repeatedly
7 raised First Amendment issues. I have addressed your First
8 Amendment issues at length in this case, and your submission
9 that you've submitted to the Court is essentially more of the
10 same that I've already addressed. I am incorporating the
11 Court's prior rulings in both pretrial and post-trial on your
12 First Amendment arguments, Mr. Moffitt, including the Court's
13 November 17th, 2005, opinion which can be found at 2005
14 Westlaw 3095543, and the Court's ruling on your post-trial
15 motions for acquittal and for a new trial. And I am rejecting
16 your First Amendment arguments for the reasons I've already
17 addressed at length. And I am incorporating those by
18 reference.

19 Also, I do note, because your submission as a prior
20 submission to this Court ignored it, that I am incorporating
21 and referring to the Seventh Circuit's decision in 2003
22 affirming the Chicago district court's civil contempt order
23 against Dr. Ashqar. The Seventh Circuit previously determined
24 that both the New York and the Chicago district court's
25 contempt orders were designed to coerce Dr. Ashqar into

1 complying with the Court's orders. That is not in your
2 submission, and I'm incorporating that by reference into the
3 Court's sentencing today.

4 The Seventh Circuit's opinion is at In Re Grand Jury
5 Proceedings of the Special April 2002 Grand Jury, 347 F.3d 197
6 at 200 and 206 to 207. That's a 2003 opinion.

7 With that, I will turn to the specific offense
8 characteristic enhancement. You have objected to the
9 three-point specific offense characteristic enhancement set
10 forth in Section 2J1.2(b)(2).

11 I have read your submission -- all of your
12 submissions, Mr. Moffitt. I've read the government's
13 response. In light of Agent Bray's testimony from last week,
14 is there anything you would like to add, Mr. Moffitt, to that
15 proposed enhancement?

16 MR. MOFFITT: Judge, forgive me, but the numbers
17 don't --

18 THE COURT: Sure, sure.

19 The enhancement for substantial interference with the
20 administration of justice. That's the three-point
21 enhancement.

22 MR. MOFFITT: Yes, your Honor, there's a great deal
23 that I would like to add, but I will add it as quickly as
24 possible.

25 I think Mr. Bray's testimony sets out what I have

1 always thought about this particular case. It was not unknown
2 to the government when they called Dr. Ashqar before the grand
3 jury that he had in a prior occasion been called before a
4 grand jury and had refused to talk to the grand jury for the
5 same reason that he had refused to talk to the FBI earlier in
6 19 -- in the years 1993 through 1996, when he was called.

7 I would suggest to you to tell us that you would base
8 an investigation entirely on Dr. Ashqar under the
9 circumstances has got to create something in your mind about
10 how silly that might be under the circumstances. Dr. Ashqar,
11 I would suggest to you further about Mr. Bray's testimony
12 included all the references to what happened in the trial and
13 the times that the government had evidence with regard to
14 Dr. Ashqar and his concern.

15 On one page, Mr. Bray testifies that he thought that
16 Dr. Ashqar as of the time of the grand jury was in
17 communication, was using his telephone as a conduit, and yet
18 all the evidence of that ended in 1995. All the evidence of
19 any contact with Marzook ended in 1995, all prior to the
20 designation of Hamas as a terrorist organization by the United
21 States government.

22 Virtually every piece of evidence against Dr. Ashqar
23 ended in 1995. The Al Aqsa fund had ceased to exist prior to
24 Hamas' designation. Any contact with any of these people that
25 the Court -- that the agent testified they were concerned

1 about had certainly ended prior to Hamas' designation.

2 The evidence in this case sat for approximately eight
3 to ten years without anybody doing anything with it. It was
4 finally collected when this grand jury started. When we
5 asked -- when the government introduced the list of phone
6 numbers and said that they would have liked to have known what
7 these people's relationship was with Dr. Ashqar, Dr. Ashqar
8 was not the only person that could provide that information.
9 The people on the list could provide the information. The
10 government chose not to subpoena or even talk to or call up
11 any of these people on this list.

12 And as you know, we went through a rather detailed
13 cross-examination with regard to that. None of these people
14 were called. The suggestion here is for some reason, this
15 investigation was thwarted by Dr. Ashqar when a parallel
16 investigation was ongoing in Dallas, Texas, investigating many
17 of the same issues and many of the same people and, in fact,
18 in a trial of that case used much of the same evidence,
19 evidence from Dr. Ashqar's home, virtually -- other things.
20 That did not disable that grand jury from indicting all of the
21 people that they indicted in the Holy Land case, as I suggest,
22 nor did it disable that grand jury and that U.S. Attorney's
23 Office from naming over 300 unindicted co-conspirators.

24 To suggest that the only source of information here
25 with respect to what was going on with regard to Hamas was

1 Dr. Ashqar is, I believe, a bit of a stretch to give the
2 government as much benefit as I possibly can.

3 THE COURT: Mr. Moffitt, I'm sorry to interrupt you,
4 but address somewhere in your statement the significance --
5 your argument that they're suggesting he is the only source of
6 information. The enhancement 2J1.2(b)(2) provides that if the
7 offense resulted in substantial interference with the
8 administration of justice --

9 MR. MOFFITT: Well, I --

10 THE COURT: One second, please -- increase by three
11 levels, and note 1 provides further definition of substantial
12 interference with the administration of justice, but nowhere
13 in there does it say somebody has to be the only source of the
14 information.

15 MR. MOFFITT: Well, I suggest to you, your Honor,
16 that to compare what happened here with what happened in
17 Dallas, to suggest that simply because they did not, according
18 to even Mr. Bray's testimony, follow up the leads that they
19 have, then to come in and claim the only reason that they
20 didn't follow up those leads was because Dr. Ashqar refused to
21 testify, I think stretches credulity at this particular point.

22 Other people followed up other leads would show and
23 demonstrate that this grand jury and these agents could have
24 gone further than they did, and they were not limited by what
25 I mean to relying solely on Dr. Ashqar for information.

1 If the truth of it were to be believed or if the
2 government's urging on this was once they couldn't talk to
3 Dr. Ashqar, that was the end of it, that was the end of their
4 investigation, that certainly didn't happen in a very
5 comparative parallel investigation in Dallas, Texas. And I
6 only offer that as an illustration of how far we can go. We
7 heard all of the things that Mr. Bray didn't do.

8 The other thing I would suggest, that this
9 information, whatever information it was, the government had
10 no information and has demonstrated no information and could
11 not demonstrate it before this jury, that Dr. Ashqar
12 maintained any contact with any of these people. And
13 certainly if they had had that information at the trial, they
14 would have offered that information.

15 So, by the time they called Dr. Ashqar before the
16 grand jury, Dr. Ashqar's information is eight to nine years
17 old and stale, I would suggest. It's certainly not even
18 sufficient enough at that point for you, if they came before
19 you and offered that information to search Dr. Ashqar's house
20 in an affidavit in 2003, you certainly wouldn't have given
21 that affidavit to them on the basis that whatever probable
22 cause they had to believe that Dr. Ashqar was still doing
23 whatever he was doing in 1993 was stale. No judge would have
24 authorized a search warrant under the circumstances of how the
25 government put this evidence together.

1 When Mr. Bray testifies after all the investigation
2 of Dr. Ashqar, after everything they've done, after a trial
3 and whatnot, he can still not offer anything but an opinion
4 not supported by one piece of evidence that Dr. Ashqar was
5 still in touch or in communication with any of these people.

6 I would also point out to you, your Honor, by the
7 time that Dr. Ashqar was subpoenaed in Chicago, the United
8 States government had kicked Mousa Abu Marzook, the target of
9 the grand jury investigation, out of this country. It
10 certainly wasn't likely he -- and as Mr. Bray testified, I
11 believe, he said he was either in Syria or Jordan by the time
12 this investigation began.

13 All right. I suggest to you that the idea that
14 Dr. Ashqar was going to offer them something that would allow
15 them to indict Mousa Abu Marzook is belied by the fact that
16 they were able to indict Mousa Abu Marzook.

17 They talk about also whether they could indict
18 Mr. Salah with regard to this. Mr. Salah was indicted. He
19 was indicted based on his own set of confessions and various
20 other things. They certainly didn't need Dr. Ashqar to indict
21 Mr. Salah. And I point out to you that throughout all of
22 this, pretty unabashedly, the government has suggested that
23 during the course of this whole attempt to get Dr. Ashqar to
24 talk, he was still a target. Even though he was immunized --
25 if you remember, I asked Mr. Bray about whether or not he was

1 still going to be indicted. I suggest to you that the
2 circumstances understanding the full impact of Mr. Bray's
3 testimony in this particular case is that the government for
4 eight years sat on this information, didn't do anything with
5 it. According it him in the first part of this, didn't even
6 translate the information. All right?

7 The government also, I think, as I mentioned to you,
8 had the ability, and if they firmly believed that Dr. Ashqar
9 was still involved with these people, the wiretap, the bug,
10 all of the things that they did to Dr. Ashqar could have been
11 extended if there was probable cause under the FISA rules.

12 Mr. Bray did not even say that he was aware of how
13 long the wiretap was as he came in here and testified. So, if
14 they had any real evidence that Dr. Ashqar continued this
15 behavior, they had the ability to extend the wiretap, to get
16 another wiretap, to bug his house again, to search him, to do
17 all of these things, none of which happened.

18 So, I would suggest to you that under -- on even the
19 widest expansion of this particular evidence, this evidence
20 was stale. And whatever Dr. Ashqar could say to them based on
21 the information that Mr. Bray had is a lot of speculation
22 without any material support of any pieces of evidence that
23 would indicate at all that Dr. Ashqar was in a position to
24 give them current and up-to-date information.

25 And I suggest to you that under -- in 1993, to the

1 extent that much of what Dr. Ashqar knew was in 1993, we still
2 operate under a five-year statute of limitations in this
3 country. And he was called before this grand jury after that
4 five years had expired.

5 So, I suggest that unless the government was very
6 creative in their indictment, as they were with Dr. Ashqar,
7 with regard to making it into a RICO case and into a
8 conspiracy, the information that they were going to get was
9 very old. And there were sources of information that the
10 government developed that gave them more current information.

11 For instance, Mr. Shorbagi. Dr. Ashqar's failure to
12 testify did not keep the government from developing
13 Mr. Shorbagi as a source of information. He gave them more
14 particularized information about what was going on with regard
15 to Hamas and HLF post the designation. So, to suggest here
16 today that Dr. Ashqar had any information that they could use
17 about anything having to do with Hamas post the designation is
18 just -- is just ludicrous under the circumstances.

19 And if it was so important that they know about this,
20 why did they allow this evidence to sit for as long as they
21 allowed it to sit? I suggest that the real impetus in this
22 case was what happened on 9/11/2001, when all of this evidence
23 became important to further so-called terrorism
24 investigations.

25 But I don't suggest that the inquiry into Hamas was

1 in any way affected by Dr. Ashqar. They knew exactly what
2 Dr. Ashqar knew. They searched his house. They bugged his
3 phone. They bugged the meeting in Philadelphia. They bugged
4 his house. All of this occurred in 1993. All of this
5 occurred ten years before. And the only piece of evidence
6 that the government suggested occurred post-1995 when the
7 designation was was the information that Mr. Shorbagi got.

8 And I suggest that Mr. Shorbagi was available to the
9 government to get him to testify. He admitted that he had
10 contributed to HLF post the designation. He took the position
11 that he knew at the time that he contributed to HLF that HLF
12 was doing -- working for Hamas.

13 I suggest that if you remember the testimony of
14 Judith Miller, the reason that Judith Miller was sent overseas
15 to see Mr. Salah in 1993 was that the Israeli government was
16 trying to convince the United States at that time that Hamas
17 was raising money. This was pre-designation.

18 At that point, the government was not aware, did
19 not -- was not acting. And part of this whole thing, I
20 suggest to you, was they found out in 1993 exactly what was
21 happening with Dr. Ashqar and what he was doing. They took no
22 affirmative steps whatsoever to prosecute Dr. Ashqar or to
23 call him before a grand jury in 1993, when this information
24 was not stale. And I would suggest that would have been the
25 appropriate time to call Dr. Ashqar.

1 After waiting ten years to and to call Dr. Ashqar
2 under those circumstances, plus understanding that there had
3 been almost what has been described as an even dozen of
4 meetings between Dr. Ashqar and the FBI from the years 1993 to
5 1996, having had Dr. Ashqar before a grand jury in New York,
6 having not moved to prosecute Dr. Ashqar at that time, by
7 2003, the government knew exactly what Dr. Ashqar's position
8 was well in advance before he was called.

9 As you know, he was held in civil contempt in New
10 York, went on a hunger strike to refuse, had taken the
11 position that he was not going to testify against people who
12 were fighting, what he perceived to be fighting for the
13 freedom of Palestinian people. He was also aware at the time,
14 I would suggest to you, that the Israelis were involved in
15 this investigation. He had been told that.

16 So, I suggest to you that to claim at this particular
17 point that they were shocked or nonplussed and it didn't
18 further their investigation sort of is belied by all of those
19 facts. And I don't want to repeat myself, but it seems to me
20 that Mr. Bray's testimony, pretty much all of it, indicates
21 that everything that they knew and everything they were going
22 to ask Dr. Ashqar about were events that they knew about in
23 1993, people they knew about in 1993, relationships between
24 people that they knew about in 1993, the Philadelphia meeting
25 that occurred in 1993. All of those things. They were even

1 aware at the time that they called Dr. Ashqar -- and if you
2 remember, there was a discussion regarding the Philadelphia
3 meeting where the decision was made that the Al Aqsa fund
4 would go out of business. There are no bank records
5 post-1993, no phone records post-1993, nothing with regard to
6 Mousa Abu Marzook past 1993, and nothing with regard to the Al
7 Aqsa fund post the phone call regarding the Philadelphia
8 meeting in 1993.

9 For all of those reasons, I suggest for the
10 government to suggest under these circumstances that
11 Dr. Ashqar inhibited their investigation because he didn't
12 provide them with information that at the time they were
13 asking for it was ten years -- between eight and ten years
14 old, if not older, because if you remember some of the
15 information that Mr. Bray testified to he said centered from
16 the mid 1980's.

17 So, you know, at the end of the day, a reliance on
18 Dr. Ashqar here had to be misplaced. And it's really unfair,
19 I would suggest, to impose such an enhancement on him.

20 THE COURT: Mr. Schar?

21 MR. SCHAR: Judge, I think there are two distinct
22 issues that are kind of being argued by Mr. Moffitt, and one
23 I'm not sure you've asked for argument on yet, and that's the
24 concept of whether there was actual obstruction here.

25 What I understand you to be asking is given the

1 baseline, which is defendant Ashqar has been convicted of
2 obstruction of justice, did that obstruction, which has now
3 been found beyond a reasonable doubt, cause substantial
4 interference to the government within the concept of the
5 guideline.

6 And Agent Bray's testimony could not be clearer of
7 the amount of effort and exercises that had to occur because
8 of the fact that the government could not obtain the testimony
9 of Dr. Ashqar. There's a lot of second guessing going on of
10 whether or not the government should have called Dr. Ashqar or
11 should have approached other people.

12 THE COURT: You are correct, Mr. Schar. I am just
13 taking now argument on the enhancement for substantial
14 interference with the administration of justice.

15 I know there's some overlap. Some of Mr. Moffitt's
16 arguments regarding actual obstruction go to the terrorism
17 enhancement.

18 But I am just -- I am focusing now on the substantial
19 interference with the administration of justice enhancement.

20 MR. SCHAR: And the focus on that, Judge, for the
21 government's perspective and, again, Agent Bray's testimony
22 laid out in detail, once defendant Ashqar obstructed justice
23 by refusing to testify, a number of things had to be done
24 which presumably otherwise would not have had to have been
25 done if he had chosen to cooperate with the grand jury's

1 investigation.

2 Agent Bray talked about the phone records, the calls,
3 the analysis that had to occur because defendant Ashqar would
4 not talk in the grand jury about the meaning of certain calls,
5 who he was in touch with, the actual names of the individuals
6 and the import of the conversations.

7 He talked -- Agent Bray testified at length about the
8 bank record analysis that had to occur, specifically the bank
9 records that had otherwise been obtained by the government
10 beyond the search documents. How there were numerous,
11 numerous accounts that were on their face not -- the
12 connections were unclear because defendant Ashqar would not
13 talk about the connections and the import of those records, I
14 believe Agent Bray talked about the fact that volumes of
15 records actually had to be sent to FBI headquarters where I
16 think his phrase was hundreds, if not thousands, of hours had
17 to be taken to input those documents into databases, analyze
18 them and then provide the results to the Chicago agents and
19 government that were investigating the larger Hamas
20 conspiracy.

21 The documents that were taken out of defendant
22 Ashqar's house. Prior to this point, those had been used, I
23 think, as Agent Bray said, primarily for purposes of
24 investigative intelligence, not been used with an eye towards
25 kind of a larger criminal trial or investigation. Obviously,

1 the government was relying -- and this, in large part, will
2 actually -- will go to actual obstruction, but I will withhold
3 my comments on that. Suffice it to say the government was
4 relying in large part on the person who maintained those
5 documents: Defendant Ashqar, to explain which ones were
6 relevant, which ones were important, what they meant and which
7 ones the government should be spending time focusing on.

8 His refusal to provide any testimony regarding that
9 forced the government to go through a laborious process in
10 which essentially all the documents had to be translated
11 verbatim, quality controlled -- and this is all through Agent
12 Bray's testimony -- through hundreds of hours just to get a
13 fuller understanding of what actually was in the documents
14 because defendant Ashqar would not testify.

15 You know, I could go on, Judge, but on that
16 particular point, I think Agent Bray laid out over and over
17 again the various things that needed to occur in order for the
18 government to be able to move forward with its investigation,
19 and it was one of the reasons that defendant Ashqar's
20 testimony was so critical so early on is that he could have
21 resolved and negated the need to do many of the things the
22 government had to do because of his centrally located position
23 within this conspiracy.

24 The archivist, the phone -- kind of the phone, you
25 know, operator in a certain sense. He was on the phone with

1 numerous people. He had documents. He had bank records of
2 his own and other individuals. He could have provided
3 basically a roadmap to all of these things and permitted the
4 government to avoid spending time, resources of agents and
5 lawyers to do this.

6 As to some of the comments Mr. Moffitt made, I don't
7 want to go into any particular detail now, but I would just --
8 there seems to be a continuing belief that all of the
9 government's evidence somehow ended in 1993 and the phrases
10 were defendant Ashqar didn't have any knowledge of anything
11 that happened beyond that.

12 No one knows that, Judge, because he won't answer
13 questions. To this day, he won't answer questions. And I
14 will tell you -- and Mr. Moffitt made the point, I think,
15 rather aptly in his comments, he was put into the grand jury
16 in 2003. At that point, we didn't know about Mohammad
17 Shorbagi. We didn't know that in 1995, years after the search
18 had occurred, in fact, defendant Ashqar had sent documents to
19 Mr. Shorbagi. That was only discovered later. He could have
20 provided that information to the grand jury. We could have
21 avoided a lengthier investigation of Mr. Shorbagi.

22 But beyond that, what other information is there that
23 he has locked in his mind right now that we don't know about?
24 Just because the government can't produce additional evidence
25 doesn't mean it doesn't exist because in 2003, we didn't know

1 about Mr. Shorbagi, but he sure existed and those documents
2 sure had been sent to him by defendant Ashqar.

3 And on and on it goes, Judge. I'm happy to answer
4 additional questions, but I think that Agent Bray's testimony
5 laid out in great detail the type of things the government had
6 to incur. And, frankly, everything that occurred at the trial
7 also laid out all the types of things that the government had
8 to do it would not have otherwise had to do had defendant
9 Ashqar agreed to testify.

10 MR. MOFFITT: Your Honor, let me draw your attention
11 to Page 80 of Mr. Bray's testimony about -- that discusses the
12 translations and issues of the translations.

13 Agent Bray could not tell us what quantum of
14 documents had been translated before 2002. He did tell us
15 that some of the documents had been translated, but he
16 couldn't tell us. And he told us that some of those documents
17 had been translated nine years before this grand jury focused
18 on Dr. Ashqar.

19 He suggested that they had been translated as early
20 as 1994. Certainly nobody was having Dr. Ashqar testify or be
21 called to a grand jury at that point. He says that some of
22 those documents were transferred -- were translated
23 completely, but he was not sure of what documents had been
24 transferred completely.

25 Now, also, let's not lose sight of what happens here.

1 Assuming for the sake of argument, Mr. Ashqar -- or
2 Dr. Ashqar -- had cooperated. And I've represented people who
3 have cooperated with the government. They do not take as
4 gospel the words of the individual who was cooperating. And
5 if they were going to ever try anybody with regard to these
6 translations or -- and the transcripts of these phone calls,
7 and if they were going to put Dr. Ashqar on to testify and
8 they wanted to use some of these phone calls, they were going
9 to have to translate them.

10 So, to suggest that the reason that they weren't
11 translated was that Dr. Ashqar had failed to cooperate
12 stretches -- again, stretches credulity. Virtually every case
13 that I've ever been involved in that involves these kinds of
14 things involves translations that the government has got to
15 do. And when they're going to produce evidence against a
16 person, they have to translate the matters. When they're
17 going to use Dr. Ashqar as a witness, they were going to have
18 to translate and interpret the bank records. They were going
19 to have to do all of the same things if Dr. Ashqar had been a
20 witness.

21 You know, this is -- to suggest -- every time I've
22 ever sat down at one of those debriefing sessions, the
23 government has created, before they've talked to the witness,
24 a list of information from the information that they possess.
25 And to suggest that the only reason -- the only time they were

1 going to do anything about preparing this information that
2 they had for eight years was if Dr. Ashqar cooperated with
3 them in their investigation again I think, you know, strains
4 the level of credulity here. The government doesn't operate
5 that way. They don't simply take the word of somebody that is
6 supposedly cooperating. They do their homework beforehand or
7 at least anywhere that I've ever been.

8 So, to -- and they would have -- they would have
9 translated this, they would have talked to Dr. Ashqar, and
10 they would have tested him with regard to the translations
11 under these. So, I don't think we should close our eyes to
12 how the government has operated, at least since I've been
13 aware.

14 THE COURT: Guideline 2J1.2(b) (2) provides that if
15 the offense level resulted in substantial interference with
16 the administration of justice, increase the offense level by
17 three levels. Note 1 to that guideline provides that
18 substantial interference with the administration of justice
19 includes a premature or improper termination of a felony
20 investigation, an indictment, verdict or any judicial
21 determination based upon perjury, false testimony or other
22 false evidence or the unnecessary expenditure of substantial
23 governmental or court resources.

24 The Seventh Circuit has also referred to this in U.S.
25 vs. Tankersley, T-A-N-K-E-R-S-L-E-Y, 296 F.3d 620. That's a

1 2002 Seventh Circuit case.

2 The last part of that note is what the operative
3 provision in this case is, the unnecessary expenditure of
4 substantial governmental or court resources.

5 Before I get to your objection on whether or not this
6 applies, I want to first address, Mr. Moffitt, an objection
7 that you made to this enhancement, as well as to the others.
8 You have objected to the application of the preponderance of
9 the evidence standard by the Court in its fact-finding for
10 sentencing purposes. That objection is overruled based on
11 clear Seventh Circuit law. U.S. vs. Alwan, 279 F.3d, 431 at
12 440, a 2002 Seventh Circuit opinion; United States vs.
13 Emerson, 501 F.3d 804, an opinion from this year; and indeed,
14 in August of this year, the Seventh Circuit in U.S. vs.
15 Hollands, 498 F.3d, 622 at 633 reiterated that "judicial
16 fact-finding by a preponderance of the evidence is still a
17 legitimate basis for arriving at the applicable guidelines
18 range and does not violate the Constitution, so long as the
19 guidelines are advisory and the ultimate sentencing decision
20 is based on the Section 3553(a) factors."

21 I am -- based on clear Seventh Circuit precedent, I
22 am rejecting and overruling your constitutional arguments.

23 MR. MOFFITT: Your Honor, if I might, I understand
24 what your Honor did, but I certainly wish to be heard with
25 regard to the terrorism enhancement.

1 THE COURT: We're not at that yet. If you want to be
2 heard on that, I certainly can. You've made that objection as
3 to the applicable standard throughout, including to the
4 2J1.2(b)(2) enhancement.

5 MR. MOFFITT: I understand. I just want it be clear.

6 THE COURT: And I'm overruling your objection.

7 I also find that the government has established by a
8 preponderance of the evidence that Dr. Ashqar's refusal to
9 testify before the grand jury resulted in a substantial
10 expenditure of time and money by the government, and the
11 substantial interference of administration of justice applies.

12 I'm basing this on several factors. The evidence
13 that was introduced at trial established that the defendant's
14 knowledge and connection with Hamas leaders through phone
15 calls, through documents that were obtained at his residence,
16 including the list of individuals that was submitted at the
17 beginning of this sentencing hearing last week. Agent Bray's
18 credible testimony established that the government had to have
19 investigators organize and analyze voluminous financial
20 records to determine relationships and connections among Hamas
21 co-conspirators, as well as the origin and final destination
22 of significant monetary sums.

23 Dr. Ashqar, based on the evidence obtained in his
24 residence and other documents admitted at trial, was in a
25 unique position to provide information regarding other Hamas

1 members in the United States. The Jarad debriefing memo that
2 was written by Dr. Ashqar, which was admitted as an exhibit in
3 trial, is one piece of evidence of that.

4 Agent Bray also testified about the significant
5 resources that had to be expended by the FBI to address the
6 financial documents, as well as the communication among
7 individuals that they were focusing on in connection with
8 their investigation. Agent Bray described this as a series of
9 needles in a haystack that they were trying to decipher and
10 that Dr. Ashqar's testimony could have provided relevant
11 information to them and could have helped them find those
12 needles in the haystacks.

13 His testimony, as well as the evidence admitted at
14 trial, more than satisfies the government's preponderance of
15 the evidence standard that significant resources on financial
16 documents and other documents found in his residence had to be
17 committed, hundreds if not thousands of hours he testified to,
18 had to be committed to decipher this information that could
19 have been deciphered by Dr. Ashqar.

20 In addition, something that came out during trial,
21 there were various confessions found from Hamas individuals in
22 Dr. Ashqar's residence that he was collecting and sending to
23 others as we heard at trial, including his co-conspirators or
24 charged co-conspirator, Mr. Salah's confession that was
25 discussed at length in trial and I'm not going to go into

1 here. But that information, as Agent Bray testified to, was
2 very relevant to their information. Why he had that, who
3 these individuals were, where was he obtaining that
4 information. All of that is information that just supports
5 the substantial interference with the administration of
6 justice in this case.

7 I am overruling your objection to that three-point
8 enhancement, Mr. Moffitt, and I will adopt the presentence
9 investigation's calculation and apply the three-level
10 enhancement under 2J1.2(b)(2).

11 You made a point, Mr. Moffitt, that the government
12 would have translated all of these phone calls anyway. It's a
13 lot easier to translate phone calls when you have one of the
14 participants in the phone conversation helping you translate
15 them. And Dr. Ashqar did not provide that assistance.

16 For those reasons, I am applying the three-level
17 enhancement.

18 The next objection in the presentence investigation
19 report's calculation is to the application of the
20 cross-reference 2J1.2(c), the cross-reference applying 2X3.1.

21 2J1.2(c) provides that if the offense involved
22 obstructing the investigation or prosecution of a criminal
23 offense, apply 2X3.1, the accessory after the fact in respect
24 to that criminal offense if the resulting offense is greater
25 than that determined above.

1 The presentence investigation report applies the
2 offense level for murder pursuant to 2A1.2 -- 2A1.1. I am
3 sustaining your objection to the application of this
4 enhancement. The government did not originally seek this
5 enhancement. This was something that was in the presentence
6 investigation report.

7 Based on all of the evidence that this Court heard
8 through the lengthy trial, in addition to Agent Bray's
9 testimony, this -- the application of this enhancement is too
10 tangential to this case. Even Agent Bray, when he was asked
11 about specific murders, he answered, well, the answer to that
12 is yes and no, which I think was telling about connecting the
13 offense of conviction here to murders. There is no specific
14 evidence that has tied Dr. Ashqar to any particular murders.
15 I think that application is just too tangential, and I will
16 sustain your objection.

17 Mr. Schar, if you want to put anything on the record,
18 you're certainly welcome to do so. I know you addressed it in
19 your written submission, but if you feel the need to add
20 anything for purposes of the record, go ahead.

21 MR. SCHAR: Judge, for purposes of the record, no.
22 We believe the PSR is accurate. However, we will stand on the
23 brief in that regard.

24 THE COURT: Okay.

25 The next enhancement is 3A1.4, which provides that if

1 the offense is a felony that involved or was intended to
2 promote a federal crime of terrorism, increase by 12 levels,
3 but if the resulting offense level is less than level 32,
4 increase to level 32.

5 Mr. Moffitt?

6 MR. MOFFITT: Yes, ma'am.

7 THE COURT: Again, please do not reiterate everything
8 in your 175-page submission. I have reviewed that
9 extensively. I've reviewed the government's response. But I
10 know Agent Bray's testimony was relevant in part to this
11 enhancement. So, I will give you the opportunity to add
12 anything you would like.

13 MR. MOFFITT: Well, I would suggest to you our first
14 assertion here is that the government placed the issue of
15 what -- whether this was an obstruction to further Hamas
16 before the jury. They placed it. These two obstruction
17 pieces, the New York and the Chicago piece, were part of the
18 conspiracy that Dr. Ashqar was acquitted of.

19 In the closing argument of the government at Page
20 310, at Page 322, the government argued that the obstruction,
21 the two obstructions of Dr. Ashqar were predicate acts in
22 furtherance of the RICO conspiracy; and, therefore, Dr. Ashqar
23 could be found guilty on the RICO conspiracy by finding him to
24 have obstructed justice twice, that these were the typical of
25 the predicate acts and that this was something that the

1 government -- the judge -- I mean, the jury could find based
2 on these, the jury could find Dr. Ashqar guilty of the RICO
3 conspiracy.

4 In fact, as you know, the jury found Dr. Ashqar not
5 guilty of the RICO conspiracy. And I suggest there has been a
6 jury finding with regard to this in light of the government's
7 placing these in the indictment and further in light of the
8 fact that they argued to the jury that these were predicate
9 acts in furtherance of the RICO conspiracy. The jury
10 absolutely rejected it.

11 Therefore, the government, in seeking to aggravate
12 this, has done -- is doing exactly what Apprendi says they
13 can't do. Having placed this issue before the jury, the
14 jury's finding of a reasonable doubt governs in terms of
15 aggravating the sentence with regard to Dr. Ashqar because it
16 expands this beyond the normal amount that you could give
17 Dr. Ashqar under the circumstances. This is exactly the
18 issue, first of all, that Apprendi addressed.

19 So, to suggest at this particular point after having
20 placed this information before the jury and having had the
21 jury to reject it, that the government gets a second chance
22 now to go against that verdict and they get a second chance at
23 a lower standard is, I suggest to you, a violation of the
24 Sixth Amendment under any Apprendi line of cases.

25 Clearly, Apprendi said that, you know, other than the

1 fact of a prior conviction, any fact that increases the
2 penalty for a crime beyond the prescribed statutory maximum
3 must be submitted to a jury and proved beyond a reasonable
4 doubt.

5 Here it was submitted to a jury, and here it wasn't
6 proven beyond a reasonable doubt. And I suggest that this
7 makes this case very different than most, if not all, of the
8 cases where the enhancement has been applied. In most of
9 those cases, there has been a plea or a finding of guilt on
10 the underlying charge that forms the basis for which the
11 government seeks the enhancement. This was neither a plea,
12 nor was there a finding of guilt.

13 So, our first line of discussion with you with regard
14 to this comes directly out of the Apprendi/Blakely line of
15 cases. And to suggest here to attempt to aggravate Dr. Ashqar
16 beyond what the jury found would be, as discussed in those
17 cases, I suggest to you, a violation of the Sixth Amendment.

18 Beyond that, your Honor, there are problems that are
19 raised by Rita with regard to this situation. This case is
20 the case that is discussed in Rita where there are Sixth
21 Amendment issues involved, and there's Sixth Amendment issues
22 involved simply because of what the jury has done. This is a
23 case that is anticipated by both the concurrence and the
24 dissent in Rita where there are Sixth Amendment issues that
25 are on that particular point.

1 I would suggest, and I don't want to, again, repeat
2 any of our arguments. Here clearly what is happening is they
3 are using the enhancement to increase the guideline sentence,
4 and I suggest to you that we have to examine whether or not at
5 this particular point what the statutory maximum is and
6 whether the statutory maximum is applied before the 3653
7 factors or whether the -- I guess the 3553 factors -- govern
8 whether there is enhancement. That's the basis of Rita.

9 THE COURT: Which statutory maximum? Obstruction has
10 a ten-year, but contempt has life.

11 MR. MOFFITT: Well, I said --

12 THE COURT: He was convicted on both.

13 MR. MOFFITT: I understand.

14 The first thing I would say to you is that the
15 obstruction and the contempt here, he was convicted of
16 obstruction because of the contempt. They are not in any way
17 separated under this.

18 Further, I would suggest that an unreasonable result
19 here would be if he was sentenced to life. And we've noted
20 that in our paper.

21 But beyond that --

22 THE COURT: But I can get to that eventually, but I
23 think that's taken off the table in terms of the guideline
24 range with no accessory after the fact.

25 MR. MOFFITT: I understand.

1 THE COURT: So, you don't need to spend too much time
2 on that in terms of --

3 MR. MOFFITT: Okay.

4 THE COURT: -- the guidelines themselves.

5 MR. MOFFITT: Again, I would suggest to you here that
6 the application of the guidelines, again which are advisory,
7 under the circumstances where a jury decided this issue and
8 giving him a life sentence under those circumstances would
9 violate virtually everything we know about our Sixth Amendment
10 jurisprudence.

11 But I also suggest to you the application of note 2
12 violates the Sixth Amendment in this case. Again, we have to
13 go back to the Apprendi situation, and understanding that the
14 guidelines are no longer mandatory --

15 THE COURT: Are you talking about Note 2(b)?

16 MR. MOFFITT: I'll tell you when I look at my notes.

17 Hold on one second. I believe so.

18 (Brief pause.)

19 THE COURT: I assume that's it.

20 MR. MOFFITT: I suggest that the real issue here is
21 what Justice Stevens and Justice Ginsberg focused on and
22 acknowledging that a rebuttable presumption of reasonable
23 standard may cause Sixth Amendment problems, and they suggest
24 even if some future unusually harsh sentence might violate the
25 Sixth Amendment because it exceeds a yet-to-be-determined

1 standard of reasonableness, this case -- that's the problem
2 that wasn't presented in Reda.

3 THE COURT: I don't understand your argument,
4 Mr. Moffitt.

5 The rebuttable -- the presumption of reasonableness
6 is an appellate-level standard, not a district-court standard.

7 MR. MOFFITT: Well, the rebuttal presumption is.

8 THE COURT: An appellate-level standard.

9 MR. MOFFITT: It is clearly, all right, but in and of
10 itself, it can create a Sixth Amendment problem here under the
11 circumstances of having a sentence that is beyond the scope
12 and beyond the parameters of reasonableness.

13 Once the reasonable standard must be applied, you can
14 create a Sixth Amendment problem by sentencing someone in such
15 a harsh sentence that it does not rationally support a
16 reasonable notion. We've given you tremendous information
17 with regard to no sentence of contempt has ever gone beyond
18 five years.

19 There really isn't any reason under these
20 circumstances to impose a sentence of life on Dr. Ashqar. I
21 suggest that that's so far out of the bounds of
22 proportionality, the Sixth Amendment would clearly be
23 implicated. It was particularly implicated when this issue
24 was placed before a jury.

25 THE COURT: Again, Mr. Moffitt, I'm addressing the

1 3A1.4 terrorism enhancement --

2 MR. MOFFITT: But I don't think you can --

3 THE COURT: I'm sorry, just let me finish -- with the
4 guidelines. You're addressing the life issue, and a guideline
5 range that would have life imprisonment as a possibility would
6 be unreasonable, unconstitutional.

7 Given that I sustained your objection to the
8 cross-reference applying 2X3.1, a life-in-prison guideline
9 range is no longer possible.

10 So, I'm happy to hear anything you have to say,
11 but --

12 MR. MOFFITT: Again --

13 THE COURT: -- I think you're arguing a point that is
14 no longer a viable option under a guideline calculation.

15 MR. MOFFITT: Well --

16 THE COURT: Or I'm misunderstanding you.

17 MR. MOFFITT: Well, I am concerned because the
18 contempt guideline does not, at the end of the day, allows you
19 to decide. It doesn't impose a particular guideline range on
20 you because it's contempt. And I suggest that by coupling the
21 obstruction with the contempt, it boosts the guideline
22 range -- it can possibly boost the guideline.

23 And I'm suggesting here that when you apply the
24 guidelines, if the guidelines are going to be the fount of
25 what we do here, your guideline decision because of the nature

1 of the contempt citation has to be -- function under the level
2 of reasonableness here.

3 And still, just despite the fact because of the
4 nature of the guideline having an unending possibility or one
5 that is not defined within the framework, the discretion --
6 the first discretionary call is here at where you think this
7 contempt guideline exists.

8 And that's still, I would suggest, by the case law
9 and by the Sixth Amendment, must fundamentally, that
10 determination, you are still bound by a reasonableness
11 standard at this particular point because there is no typical
12 guideline standard for the issue of contempt. And the
13 contempt here is being used to boost the obstruction guideline
14 because it doesn't have one.

15 THE COURT: Any further arguments on the terrorism
16 enhancement, Mr. Moffitt, under 3A1.4?

17 MR. MOFFITT: Your Honor, I don't want to make all
18 the arguments that I made. As you said, you've read my paper
19 and --

20 THE COURT: Several times.

21 MR. MOFFITT: -- I trust that.

22 THE COURT: I think you know me well enough by now.

23 MR. MOFFITT: Yes, I do.

24 But I would suggest that the only way that you could
25 find beyond -- here that the terrorism enhancement applies is

1 on judicially adjudicated facts post a jury verdict, and that
2 would be a violation of the Sixth Amendment.

3 THE COURT: Mr. Schar? The 3A1.4 enhancement.

4 MR. SCHAR: Yes, Judge.

5 I may not be tracking Mr. Moffitt entirely, but as I
6 understand it, the contempt guideline based on your earlier
7 ruling is going to track the obstruction guideline.

8 THE COURT: Yes. I'm not revisiting my prior base
9 offense level.

10 MR. SCHAR: And Apprendi and Blakely as a line of
11 cases are inapplicable to this situation because the statutory
12 maximum is set at ten years for obstruction and life. There's
13 nothing that's going to change that. There's no jury finding
14 that would have changed that.

15 And in Booker, obviously you have discretion now, and
16 the guidelines are simply a factor within your discretion that
17 aren't -- that don't implicate in this particular case
18 Apprendi or Blakely.

19 The acquittal, as you have repeatedly indicated in
20 written opinions and the government has argued, does not mean
21 anything in relation to this particular guideline. In fact,
22 to the extent there's anything to be gleaned, there was an
23 obstruction finding beyond a reasonable doubt and conviction
24 when the charge was obstruction of this particular grand jury
25 investigation that was investigating terrorism.

1 We have laid out in our briefs, I think extensively
2 in relation to the terrorism enhancement, why it applies and
3 in particular, why I believe the case Biheiri out of the
4 Eastern District of Virginia and then the follow-up case,
5 which essentially just went along with the Biheiri reasoning,
6 are inaccurate or incorrectly decided at several levels,
7 including the need for actual obstruction.

8 We would urge you to find that those are standards
9 that are not required, and simply that district court made
10 some analogies such as to 3C1.1 which, in taking a step back
11 and looking, don't necessarily make sense.

12 That all being said, Agent Bray's testimony, Judge,
13 made crystal clear, as did this trial, but Agent Bray's
14 testimony in particular, that, in fact, there were specific
15 crimes of terrorism that were being investigated, both dating
16 back to 1993 and to the time when defendant Ashqar was called
17 before the grand jury. As Agent Bray noted, this was shortly
18 after or around the time that there was a bombing next to the
19 American Embassy by Hamas in a bar called Mike's Place in
20 which individuals died in a bus bombing in which Americans
21 died.

22 So, there were specific actual acts that were being
23 investigated, but there were specific statutes as laid out in
24 the grand jury that were being investigated. Indeed, an
25 indictment was returned on a material support count that did

1 not go to trial but clearly this grand jury was investigating.

2 As to actual obstruction, you've already hit on a
3 number of the things that the government would cover, and I
4 don't want to spend a lot of time going on it, but the Jarad
5 document, the who, what, when, where and why over and over and
6 over again, Judge, came up in Agent Bray's testimony and at
7 trial in ways that only defendant Ashqar can adequately
8 explain. Why were aliases used? Why was he using an alias?
9 Who did he transmit these documents to? Why was he writing up
10 suggestions as to how to deal with certain things? Who were
11 the people in Chicago that were upset that defendant Salah had
12 been sent on Hamas activities based on the report found in
13 defendant Ashqar's documents?

14 Yusif Saleh, Ahmed Yusif, defendant Ashqar again
15 could have provided significant information.

16 Mr. Constantine, who is Mr. Constantine? Why is
17 defendant Ashqar on the phone with Mr. Constantine talking
18 about killing a rogue Hamas member? Only defendant Ashqar can
19 answer those questions.

20 There is over and over and over again consistent
21 questions that were raised throughout the course of this
22 investigation, indeed throughout the course of the trial, that
23 only defendant Ashqar could answer.

24 And I think that was made plain when the government
25 had to publish documents repeatedly or publish phone calls,

1 and that's literally all we could do is simply lay out for the
2 jury, here's what was said. What does it mean? The person
3 who could answer that question is sitting on that side of the
4 courtroom, and he will not tell us.

5 So, to say, Judge, that there was actual obstruction
6 is an understatement, and indeed on facts significantly less
7 compelling than this, the Benkahala Eastern District case
8 found actual obstruction, as well.

9 So, we think that the standard is not that laid out
10 in Biheiri, but even if it is, the facts of this case by a
11 preponderance of the evidence demonstrate the terrorism
12 enhancement applies.

13 MR. MOFFITT: Your Honor, let me just read something
14 to you.

15 THE COURT: I'm sorry?

16 MR. MOFFITT: Let me just read something to you.
17 This is from Page 322 of the closing argument.

18 "You have Abdelhaleem Ashqar, obstruction of justice,
19 the fifth one up there, committed two acts of obstruction of
20 justice, one in 1998, one in 2003. That's two acts of
21 racketeering activity. That in itself could establish the
22 pattern."

23 I suggest to you that when the jury said Dr. Ashqar
24 was not guilty of the racketeering in the face of that
25 argument, you can only glean that the jury thought that there

1 was another reason other than furtherance in -- furthering the
2 racketeering conspiracy for Dr. Ashqar's failure to testify.
3 And to suggest anything else under these circumstances would
4 be to suggest an untruth.

5 So, having the government place this in front of a
6 jury and having the jury reject that notion puts us squarely
7 within the Sixth Amendment issue. And I suggest that you
8 can't revisit it now at this particular point, having done
9 that.

10 They didn't have to do it that way. They didn't have
11 to do it that way. And the reason they, frankly, did that
12 that way, your Honor, was to get it within the statute of
13 limitations. Whatever conduct Dr. Ashqar had committed prior
14 to his testimony in 2003 or being called to testify in 2003
15 would have been well away from the statute of limitations.
16 And, therefore, Dr. Ashqar could not be charged.

17 So, in order to charge Dr. Ashqar, they put this in
18 as an act in furtherance of the RICO conspiracy. That would
19 give them a case that was within the statutory limits, and,
20 therefore, they had to argue this.

21 Now, I don't know what reasons the jury decided to
22 acquit Dr. Ashqar, but they did. And if any of this -- if any
23 of this stuff that we've heard about the jury being the
24 foundation and not being able to aggravate a sentence where
25 the government has placed this information before a jury

1 beyond a reasonable doubt and not gotten what they wanted, at
2 the end of the day, you know, that case law has to have some
3 meaning.

4 So, again, I would suggest to you that the first line
5 of defense here is the Apprendi line of cases and that once
6 the jury's decided this issue, this should not be an issue for
7 you because -- I will finally say because the acquittal's got
8 to mean something. If that, then there is no point in ever
9 going to trial if the government gets to do what they couldn't
10 do in front of a jury in front of you where there has been a
11 jury finding.

12 THE COURT: I am going to address in my ruling
13 regarding this enhancement all of the issues, not just the
14 ones you've raised today, but the ones you have raised in your
15 papers, as well. So, my ruling on this is going to be lengthy
16 because of all of the issues you have raised.

17 I will start with -- first of all, the enhancement is
18 Section 3A1.4 that provides if the offense is a felony that
19 involved or was intended to promote a federal crime of
20 terrorism, increase by 12 levels; but if the resulting offense
21 level is less than 32, increase to a level 32.

22 I will start with your argument that the jury verdict
23 dictates this issue. I am rejecting that argument on several
24 bases.

25 First of all, the jury was considering a separate

1 issue, whether or not Dr. Ashgar had committed a RICO
2 conspiracy or should be guilty of a RICO conspiracy. Seventh
3 Circuit law is very clear that courts can't guess why juries
4 reached certain verdicts.

5 But this is a separate issue. The question is
6 whether or not his refusal to testify before the grand jury
7 obstructed a federal crime of terrorism, which would be an
8 underlying terrorism investigation as set forth in the
9 application note that you pointed out to the Court previously.

10 Even if, Mr. Moffitt, your argument were correct,
11 that somehow it was the precise issue, again, the Seventh
12 Circuit -- which I don't think it is, but the Seventh Circuit
13 has been very clear that even acquitted conduct can be the
14 basis for sentencing enhancements. But I don't rely on that
15 because it is a separate issue from what the jury determined.

16 I'm also rejecting your argument that Apprendi
17 dictates this. Apprendi is not applicable here because the
18 statutory maximum, as Mr. Schar pointed out, is ten years for
19 obstruction of justice and life for contempt. So, there is
20 not an Apprendi issue.

21 In addition, in United States vs. Hale, 448 F.3d 971
22 at 988, the Seventh Circuit in 2006 reaffirmed what it had
23 held in United States vs. Arnaout at 431 F.3d 994, 1001, a
24 2005 Seventh Circuit case. Specifically, it held that "A
25 defendant need not be convicted of a federal crime of

1 terrorism as defined by Section 2332b(G) (5) (B) for the
2 district court to apply section 3A1.4. Instead, the terrorism
3 enhancement is applicable where a defendant is convicted of a
4 federal crime of terrorism as defined by Section
5 2332b(G) (5) (B) or where the district court finds that the
6 purpose or the intent of the defendant's substantive offense
7 of conviction or relevant conduct was to promote a federal
8 crime of terrorism as defined by Section 2332b(G) (5) (B)."

9 The word "promote" as used in Section 3A1.4 signifies
10 that where a defendant's offense or relevant conduct helps or
11 encourages a federal crime of terrorism as defined in that
12 same section, then Section 3A1.4 is triggered.

13 Another argument you raised in your papers, again,
14 the beyond a reasonable doubt vs. clear and convincing versus
15 preponderance of the evidence standard, again, Arnaout and
16 Hale, the Seventh Circuit made clear that preponderance of the
17 evidence standard applies to the terrorism enhancement as
18 well.

19 You relied on U.S. vs. Kikumura, K-I-K-U-M-U-R-A, 918
20 F.2d 1084 at 1100, 1101, a Third Circuit case from 1990 in the
21 arguments that you submitted to the Court. I am -- first of
22 all, this Court is not bound by that, nor am I persuaded by
23 the reasoning in that.

24 I also note that the Seventh Circuit rejected that
25 precise reasoning in U.S. vs. Reuter, R-E-U-T-E-R, 463 F.3d

1 791, a 2006 Seventh Circuit opinion. We are in the Seventh
2 Circuit. I am bound by Seventh Circuit law.

3 And significantly, on September 10th of this year,
4 the Third Circuit specifically overruled its ruling in
5 Kikumura in U.S. vs. Fisher. The Westlaw cite is 2007 Westlaw
6 2580632. The Third Circuit held, "This case presents the
7 question we left open in our en banc decision in U.S. vs.
8 Greer. Does U.S. vs. Kikumura remain good law in light of the
9 Supreme Court's landmark decision in U.S. vs. Booker? We hold
10 that it does not."

11 Therefore, any reliance on Kikumura certainly in this
12 circuit and even in the seventh -- in the Third Circuit would
13 fail.

14 I am also rejecting your argument regarding acquitted
15 conduct for the reasons I've already addressed. The Seventh
16 Circuit itself has specifically rejected that argument. It
17 has held, "Conduct underlying an acquitted charge may be
18 included as long as that conduct is proved by preponderance of
19 the evidence." I am citing U.S. vs. Rith, R-I-T-H, 461 F.3d
20 914 at 917, a 2006 Seventh Circuit case.

21 You can also look at U.S. vs. Horne, H-O-R-N-E, 474
22 F.3d 1004 at 1006, 07. U.S. vs. Hurn, 496 F.3d 784, another
23 Seventh Circuit case.

24 Your First Amendment argument that you make regarding
25 the application of this enhancement, I am also rejecting that

1 for the reasons I've previously given and have given
2 throughout the proceedings in this case as I mentioned at the
3 beginning of today's hearing.

4 Here it is true, Mr. Moffitt, that Dr. Ashqar was
5 acquitted of the RICO conspiracy, but that does not answer the
6 question for the reasons I've already addressed. I have to
7 look to determine whether or not the purpose or intent of the
8 defendant's offense of conviction; namely, the obstruction of
9 justice by failing to testify before a criminal grand jury
10 investigating the terrorist activities of Hamas and the
11 contempt conviction, was intended to promote a federal crime
12 of terrorism.

13 In making the Court's ruling, I start with the
14 definition of a federal crime of terrorism as the Seventh
15 Circuit has said that I must. That is defined in the statute
16 I previously gave you, Section 2332b(G)(5)(B) under Title 18.
17 A federal crime of terrorism is defined as a listed offense
18 that was calculated to influence or affect the conduct of
19 government by intimidation or coercion or to retaliate against
20 government conduct. And there are various things enumerated
21 in 18, United States Code, Section 1114.

22 I agree with Officer Rice's conclusion that the
23 enhancement applies here; namely, the obstruction of justice
24 of a federal grand jury investigating the terrorist activities
25 of Hamas.

1 Application 2 which you have pointed out to the Court
2 already to Section 3A1.4, this is in both the 2006 and the
3 2007 guideline, it's the same, provides that an offense that
4 involved obstructing an investigation of a federal crime of
5 terrorism shall be considered to have involved or to have been
6 intended to promote that federal crime.

7 Here, again, the offense of conviction was for
8 obstructing justice by refusing to testify even though his
9 testimony was compelled before a grand jury that was
10 investigating terrorist activities.

11 If you look at the Court's finding, the government
12 has met its burden of establishing this by a preponderance of
13 the evidence. Looking at the evidence, we have first of all
14 Agent Bray's testimony regarding what the grand jury was
15 investigating, and Mr. Chanenson, who testified during trial,
16 also testified about what the grand jury was investigating.

17 The best evidence, frankly, is the testimony and the
18 transcript from Dr. Ashqar's testimony on June 25th, 2003,
19 before the grand jury. This was admitted into evidence at the
20 trial.

21 The transcript makes clear that the prosecutor
22 explained to Dr. Ashqar before the grand jury that he was
23 appearing before a grand jury that was investigating federal
24 crimes of terrorism, including certain acts committed by
25 Hamas.

1 Looking at Pages 8 through 11 of the transcript, it
2 is, again, very clear -- I'm going to quote from this, this is
3 the prosecutor speaking: "Let me just explain to you that
4 this grand jury -- I will tell you this grand jury is engaged
5 in a broad investigation involving federal crimes of
6 terrorism, including certain acts committed by Hamas. I would
7 like to explain to you some of the laws that the grand jury is
8 investigating. These are federal criminal laws that the grand
9 jury is investigating. If you don't understand at any time
10 the laws I'm talking about or you would like further
11 explanation, feel free to interrupt me because I'm going to go
12 through a list of laws that the grand jury is investigating."

13 The prosecutor then went through a list of laws,
14 including conspiracy to kill, kidnap or maim under 18, United
15 States Code, Section 956; 18, United States Code, Section 1203
16 regarding hostage taking; Section 2332, which makes it a crime
17 to kill a United States national while the national is outside
18 of the United States; Section 2339(a), which makes it a crime
19 to provide material support and resources to terrorists;
20 Section 2339(b), which makes it a crime to provide material
21 support and resources to a terrorist organization, including
22 Hamas; Section 2339(c), which makes it a crime to finance
23 terrorists and terrorist organizations; Section 371, which
24 makes it a crime for people to conspire to break any of the
25 laws of the United States; Sections 1961 and 1962, which make

1 it a crime for individuals to participate in the affairs of an
2 enterprise through a pattern of racketeering activity or to
3 conspire to participate in affairs of an enterprise through a
4 pattern of racketeering activity; the money laundering
5 statutes are cited, false statements to government officials,
6 those are cited, and the mail and wire fraud are cited, as
7 well as Section 1503, corruptly obstructing the due
8 administration of justice, including a grand jury
9 investigation, and Section 1512, another obstruction.

10 Those were made very clear to Dr. Ashqar when he
11 appeared before the grand jury and refused to testify. In
12 addressing one of your objections in your written submission
13 to the Court, Mr. Moffitt, not only were these made clear to
14 Dr. Ashqar when he first appeared in the grand jury, but they
15 were made clear to him at Pages 34 through 37 after he was
16 immunized and compelled to testify by the chief judge telling
17 him that what he said would not be used against him.

18 Dr. Ashqar refused to answer questions directly
19 relevant to this investigation, and I am making this ruling in
20 part based on the evidence that I heard during trial,
21 including the documents that were admitted, the phone
22 documents, the confessions from members of Hamas, the Jarad
23 memo. He refused to answer every substantive question that
24 was put before him.

25 And when he refused to answer, he repeatedly said, "I

1 cannot and will not permit my answers to be used against my
2 relatives and colleagues who have committed no crimes or
3 wrongs but who are being singled out for their involvement in
4 the struggle for political legitimate rights as recognized
5 under international law. I will never give evidence or
6 cooperate in any way with the grand jury or any other, no
7 matter what the consequence to me."

8 When asked if he would continue to refuse to answer
9 questions regarding the government's terrorism investigation,
10 despite the fact that his refusal to answer those questions
11 would harm the investigation, he read the prepared statement
12 again and informed the grand jury, "I will never give evidence
13 or cooperate in any way with the grand jury or any other, no
14 matter what the consequence is to me."

15 When asked a series of questions about specific
16 individuals that the grand jury was interested in, Dr. Ashqar
17 again incorporated his statement and refused to answer saying,
18 "I will never give evidence or cooperate in any way with the
19 grand jury or any other, no matter what the consequence is to
20 me."

21 When informed by the prosecutor that his refusal to
22 answer questions because he didn't want to give information
23 that could be used against others made it "extremely
24 difficult" for the grand jury to complete its investigation
25 and to properly investigate Hamas terrorist activities,

1 Dr. Ashqar, again, refused to testify, read his prepared
2 statement and told the grand jury, "I will never give evidence
3 or cooperate in any way with the grand jury or any other, no
4 matter what the consequence is to me."

5 After being immunized and compelled to testify by
6 then Chief Judge Kocoras, he still refused to answer any
7 questions regarding the investigation, regarding any terrorist
8 activities, regarding any terrorist activities of Hamas. He
9 was informed, again, after he was compelled to testify, that
10 the United States thought the information he had was
11 "critically important to the grand jury's investigation into
12 Hamas and other terrorist activities" at Page 53 of the grand
13 jury transcript.

14 He was also advised that his refusal to answer the
15 questions would have a significant impact on the government's
16 investigation into terrorist activities. At that point,
17 Dr. Ashqar again refused to testify and said, "I will never
18 give evidence or cooperate in any way with the grand jury or
19 any other, no matter what the consequence is to me."

20 The government has met its burden of proving, by a
21 preponderance of the evidence at a minimum, that Dr. Ashqar
22 intended to obstruct a terrorism investigation into Hamas
23 activities.

24 I know you have cited several Virginia cases
25 regarding what standard should apply. Those aren't binding on

1 this Court, and I frankly don't need to address that issue
2 because I have found, based on Agent Bray's testimony, based
3 on the evidence heard during trial, and based on the
4 transcript, parts of which I have just reviewed with you, that
5 there was actual obstruction here.

6 I am rejecting and overruling your arguments,
7 Mr. Moffitt, that application note 2 is unconstitutional.
8 I've already addressed the First Amendment argument. I am
9 rejecting your double jeopardy argument based on U.S. vs.
10 Hall, 109 F.3d 1227, a 1995 Seventh Circuit case. And your
11 Eighth Amendment cruel and unusual punishment argument is also
12 inapplicable here, especially in light of the fact that the
13 guidelines are advisory and the Court looks to the Section
14 3553 factors to make its final sentencing determination.

15 For those reasons, I am overruling your objection to
16 the application of the terrorism enhancement under 3A1.4 of
17 the guidelines. Based on that, the offense level increases to
18 a level 32 with a Criminal History Category of VI.

19 There is no role in the offense enhancement in this
20 case, given that Dr. Ashqar was the sole participant in the
21 obstruction.

22 For those reasons, our final guideline calculation is
23 an offense level of 32, a Criminal History Category of VI,
24 with a corresponding guideline range of 210 to 262 months.

25 With respect to sentencing, Mr. Moffitt, I will hear

1 from you. And I will certainly consider some of the arguments
2 that you have already raised with this Court that I believe
3 are more applicable to the ultimate sentence and the Section
4 3553 factors than to some of the particular enhancements.

5 MR. MOFFITT: Let me start by saying this is not a
6 case that I would suggest to you is contemplated by our
7 criminal law. Dr. Ashqar is not a citizen of the United
8 States.

9 THE COURT: Are you saying, just so I'm clear, that
10 the conviction or that the level of guidelines?

11 MR. MOFFITT: Well, I'm talking about the entire case
12 at this particular point. I'm assuming that you want me to
13 make my 3553 --

14 THE COURT: I want to you make any arguments you have
15 regarding sentencing and certainly include 3553 in there.

16 MR. MOFFITT: This is not a drug case. This is not a
17 case that was compelled by the issue of greed or what
18 typically involves criminal cases in the United States. This
19 case was not about money. This case is about a people.

20 As I said, Dr. Ashqar is a Palestinian. He was born
21 in Palestine, a country that is not even on the FBI computer.
22 He is a man who seeks the dignity that each and every one of
23 us seek and the right to be free in his own country.

24 He is a man, I would suggest to you, of great courage
25 and great ability. And he is in many ways an example to all

1 of us. I don't know how we call upon an individual whose
2 country has been occupied for 50 years, the occupation of his
3 country violates every norm of civilized justice. And when
4 his people scream to be made free, fight to be made free like
5 every other country that has felt the sting of colonialism,
6 they're punished? They should be punished?

7 I guess certainly under the theory that if the
8 British had won the American Revolution, then the people that
9 found this country should be punished because they found this
10 country for the same reasons Dr. Ashqar is before you.

11 So, if seeking freedom for his people in his country
12 can be made a crime in this country, how far have we come?
13 How far have we come?

14 There is no motive here other than Dr. Ashqar's
15 desire to end the occupation of his homeland. And chronicles
16 and documents and words and things have been spoken for the
17 last 50 years here, overseas, and in the United Nations about
18 the illegality of that occupation, and nothing's happened.
19 It's still occupied. The Israelis still build settlements in
20 the occupied territories. They still confiscate Palestinian
21 land. And it goes on and on and on and never ends.

22 When will it end?

23 And if we make the people who are most like us in
24 fighting for their freedom criminals because now we're an
25 established government, we're proud and we're powerful.

1 The history of our country was to look out for the
2 weak, not for the strong. There are millions of people as we
3 speak in refugee camps as a result of what has happened in the
4 occupied territories. Government witnesses won't even say the
5 word occupied. The world has condemned the occupation, but
6 the world can't stop the occupation.

7 Just like in Ghana, just like in Angola, just like in
8 South Africa, it's up to the people who live in those
9 countries to stop them. And I guess Dr. Ashqar will tell you
10 Nelson Mandela spent 27 years in jail on Robben Island
11 fighting for the freedom of African people in South Africa
12 because of an apartheid system. Jimmy Carter, the President
13 of the United States, has suggested that what is going on in
14 Israel and the occupied territories is apartheid.

15 Yet what we're saying today in the face of the entire
16 world is that these people have no right to fight back. They
17 have no Army. They have no nuclear bombs. They have nothing.
18 And in most cases they're fighting with sticks and stones, as
19 I told the jury.

20 And what are they fighting for? We are a mature
21 enough democracy, I would suggest to you, or if we are not, we
22 should be to understand the difference between what is
23 happening in the occupied territories and what a terrorist
24 group like al Qaeda looks like. These are two very different
25 things. We are now the occupiers as opposed to the occupiees.

1 I asked myself over and over, again, if the situation were
2 reversed, if it was here that was occupied, if it was here
3 that a military power had imposed military courts, had
4 incarcerated my brothers, my sisters, myself, my nieces, my
5 nephews, on the basis of supporting that occupation; if my
6 wife's family had been run from the village that she was born
7 in because of the occupation, how much courage would I have?
8 Where would I stand? Would I stand with the occupier, or
9 would I stand with the people who are fighting that
10 occupation? Would I have the courage to stand up?

11 Now, one thing that's important to note here.
12 Dr. Ashqar's act here was an act of silence. He didn't
13 mislead anybody. He didn't lie to a grand jury. And there's
14 got to be a difference, I would suggest to you, between
15 silence and perjury. He chose to remain silent. He chose to
16 remain silent out of his belief that he had a patriotic duty.

17 I've listened to Mr. Ferguson talk about Dr. Ashqar's
18 duty to the United States. He had no duty to the United
19 States. He's not a citizen of the United States. He came
20 here to get an education, and he informed people about what's
21 going on in his country. And you heard the kind of
22 information about what kind of man Dr. Ashqar was. You heard
23 the people at the University of Mississippi testify that when
24 an Islamic student died, Dr. Ashqar was the person that they
25 went to to arrange the burial.

1 You also heard from the people at Mississippi that
2 from the very beginning, they were told and, conversely,
3 Dr. Ashqar was told, that this investigation began and was
4 being promoted at the behest of the Israelis. Now, Dr. Ashqar
5 has a lot of experience with the Israelis. You've seen it in
6 your letters, in the letters to you. He has a lot of
7 experience with what the Israelis have done to him, his family
8 and what the occupation, not beginning with the British
9 occupation and his father, have done to his people.

10 Now, would I be willing to stand by and give evidence
11 to the occupier if I were asked to if this were my country
12 that was invaded? I would hope that I have more courage than
13 that. I hope that I would not lie. I hope I would not
14 mislead. I hope I would have the courage to remain silent.

15 You're not going to stop the occupation, the
16 brutalization of the Palestinian people. You put him in jail.
17 Put him in jail for a long time, and that brutalization is
18 going to continue. And it's going to continue in such a way
19 that people who are far less peaceful than Dr. Ashqar are
20 going to become more and more angry, and they're going to
21 become more and more angry about our support for that.

22 We sent you this (indicating). This gives you an
23 example of what happens to people who have his nationality
24 simply because of his nationality. Everything in our history
25 tells us that is not right, that is not fair. The fourth

1 protocol of the Geneva Convention says that an occupying power
2 can't seize the land, can't build roads, can't build
3 obstructions, yet the whole world has ignored what has
4 happened.

5 And the Palestinians are a problem. They're a
6 problem because they won't be quiet, because they want what
7 you and I want, and they want for their children what I want
8 for mine and they want for their grandchildren what I want for
9 mine.

10 And what is it about them that says they're not
11 entitled to it? Is it because they're Muslim and they don't
12 necessarily believe the same things that we believe? Is it
13 because of the color of their skin? What happens when you for
14 50 years press a people, oppress a people, deprive people of
15 the fundamental notion of liberty and justice? What happens?
16 Are they supposed to remain silent forever? Are they supposed
17 to aid their oppressor out of some spirit that their oppressor
18 ought to be aided or some spirit of justice that I would
19 suggest to you is totally misplaced? What is justice? What
20 is just for him? What is just under the circumstances?

21 Is he a drug dealer? No.

22 Is he a racketeer? No.

23 What is he after? What is the goal here? Freedom.
24 The right to determine for themselves what their country ought
25 to be.

1 And what happens? What happens? They have an
2 election. And guess what? Hamas gets elected.

3 Now, not one Palestinian, not one person with feet on
4 the ground that has a stake in that society made the
5 determination to call Hamas a terrorist group. That was all
6 done over here in the pleasure of our homes as we are not
7 being victimized by an occupation.

8 Well, you know, we have a proverb. Before you decide
9 to punish me, walk a moment in my shoes. What created a Mousa
10 Abu Marzook? What created Hamas? What created Fatah? What
11 created those problems? These are not inherently violent or
12 mean people. And this whole notion that anybody who supports
13 what happens in Palestine in the fight for power is evil is
14 ridiculous. He's not an evil man.

15 But why are his wants and his desires for the things
16 we take for granted every day -- the right to determine what
17 kind of government he lives by, the right to worship in a way
18 he chooses, the right to decide whether religion ought to play
19 a role in the law of the country -- why should he be deprived
20 of that?

21 You've read that his parents had a farm and once the
22 occupation began, they could no longer sell their vegetables
23 and their fruit. You read that his wife's parents were
24 removed from their village. This is A History of the
25 Occupation (indicating) written by Israelis, and they discuss

1 the evils of what has happened.

2 I would suggest to you that the government's theory
3 of this case was that the Palestinians wanted to lord over the
4 whole state of what was called Judea or Israel. And I suggest
5 to you they are combatted on the other side by an Israeli
6 government that wants to lord over it, as well. And they have
7 made it impossible for the Palestinians to have a viable state
8 because that was their intent from the very purpose from this
9 book.

10 The man who over the years had sown scores of
11 settlements in order to thwart any possibility of a viable
12 Palestinian state reaped in this war what he may not and many
13 Israelis believe to be the very proof in a kind of
14 self-fulfilling wish. The Palestinians are not deserving of a
15 state of their own because of their innate murderous
16 barbarity. The great victory, therefore, that Sharon
17 succeeded in chalking up to his credit before his withdrawal
18 from Gaza was the casual disconnection of the Palestinian's
19 war against the 40-year Israeli occupation from any historical
20 context and from to his handiwork over the years. From The
21 Lords of the Land, the History of the Settlements.

22 Well, in this courtroom, in this procedure, in that
23 indictment, there was a disconnect in the same way of the
24 historical context. What are they to do? What is your answer
25 to Dr. Ashqar when he says I want my people to be free? The

1 government's answer was as follows: Give up your citizenship,
2 give up your name, give up your heritage, give up what you
3 know has happened to your family, and come join us. This is
4 what we offer to you. We will put you in witness protection.
5 We will protect you from your own people. All we want you to
6 do is further our investigation in the people who in your
7 country are fighting for liberty.

8 What is a terrorist? Has there been a social
9 movement that resulted in change in this world that hasn't had
10 to use violence in some way to overturn a social order that
11 imposed the lack of any legitimate rights on the party? Has
12 that ever happened?

13 Years ago, there were revolutionary movements. It
14 was a revolutionary spirit. We did it in the United States.
15 The French did it. We salute the French Revolution and all of
16 its atrocities. And over and over in the world, we have
17 saluted people who have overcome their oppression by fighting
18 because the oppressor never gives up without a battle, no
19 matter what the oppressor says.

20 What do we say to him? Another 50 years? Another
21 generation of people in refugee camps? Another generation of
22 not resolving the issue in the Middle East? And we wonder, we
23 wonder why people in the Middle East at this particular point
24 resent us. Can't we draw a distinction between what is
25 happening and why people fight in Palestine and the difference

1 between al Qaeda? Can we be sophisticated enough to
2 understand that difference? The world demands that we
3 understand that difference.

4 This is a man who has suffered not only personally,
5 but he's been jailed by the Israelis, and yet these people
6 want to stand there in this place, in this country, unaffected
7 one way or another by this occupation, not worried about it at
8 all and make a value judgment against him? One wonders what
9 Mr. Schar and Mr. Ferguson would do under those circumstances.
10 Would they have the courage of Abdelhaleem Ashqar? I don't
11 know. I would hope so. I would hope so.

12 But how do we make a value judgment on Abdelhaleem
13 Ashqar in the face of what he's experienced, what his wife has
14 experienced, what his family has experienced, how do we say
15 that he was wrong?

16 And, Judge, I suggest to you there's got to be a
17 distinction between silence and lying. There's got to be a
18 distinction. He had the courage to stand up and say I'm not
19 going to mislead you, I'm not going to lie to you, but I'm not
20 going to tell you. I'm not going to talk to you. These are
21 people who are fighting in my country for our freedom.

22 And it's not even a country, according to us. How
23 much dignity do we take away from these people? And how long
24 do we take away their dignity and expect them to remain
25 peaceful? The American native Americans didn't remain

1 peaceful as their land was being confiscated and taken from
2 them.

3 What in our history on this planet tells us people
4 are going to sit by and let this happen to them? What else
5 tells us that 50 years of this they are not going to say I'm
6 sick and tired of being sick and tired? Do they have a right
7 to be sick and tired? How would anyone feel if they knew that
8 there were relatives in what amounts to concentration camps?

9 By what right does one people have to do that to
10 another? And then by what right do we have to expect in the
11 face of the terror, in the face of all the things that
12 happened? You've heard it. You heard it from Mr. Hroub, the
13 censorship, the closing of the universities, the lack of
14 education, the lack of opportunity, the hours and hours it
15 takes to go from place to place because there are only --
16 there are roads in the occupied territory that only can be
17 traveled by Israelis.

18 When you look and sentence Dr. Ashqar, be mindful, be
19 mindful of what you're saying to him. The Israelis imposed an
20 illegal occupation, illegal by any stretch of international
21 law, and you have no right to fight that. And if you fight
22 it, we're going to punish you.

23 Well, I know Dr. Ashqar. And if you told him that he
24 would have to spend the same amount of time that Nelson
25 Mandela spent in jail, 27 years, to vindicate his rights, he'd

1 go and spend those 27 years. That's not fair. That's not
2 just. It wasn't just in Mr. Mandela's case. It's not just in
3 Dr. Ashqar's case.

4 We are very comfortable here. We have avoided many
5 of the things that go on in the world. We have gone from
6 being a people that support poor people and people who are
7 under colonial oppression to a colonializing power. We have
8 treated Arab people very badly. And you can just look at what
9 the Blackwater people were trying to pay for the life of an
10 Arab in Iraq. We treat their lives as if they don't mean
11 anything, and we wonder why they're angry at us. We
12 wonder why we're angry, because we set ourselves up as a
13 paragon of all the things he believes in, and we tell him that
14 he has no right to believe them, he has no right to fight for
15 them.

16 And then we say to the rest of the world this is our
17 history, aren't we proud. Aren't we proud that some family
18 farmers got together and said no taxation without
19 representation and fought the British and threw tea off, and
20 we're proud of that. We tell the whole world that as a
21 revolutionary example.

22 And then when another people with less opportunity
23 under far more oppression that faced the settlers here in this
24 country stand up and fight, we call them terrorists. We call
25 them terrorists. And if this country was under the same set

1 of occupation, I hope to God I would be a terrorist.

2 It's been a great pleasure to be here in your
3 courtroom. It's been a greater pleasure to represent this man
4 because I've met him, I know him, I understand what he
5 represents. I've read pleadings that suggested that while he
6 was at school, he was just running around creating problems.

7 You have a letter from his adviser. You have a
8 letter from his adviser saying what kind of man he was.
9 You've seen numerous letters talking about what kind of man he
10 was.

11 I hope that when I leave this planet, there will be
12 those kind of testimonials to me. You're going to do whatever
13 you think is right and just and fair, and I've appreciated
14 your fairness throughout this whole process.

15 I'm going to ask for it one more time. One more
16 time. I'm going to ask you to put yourself for a moment in
17 the shoes of Dr. Ashqar, in the shoes of a family that has
18 faced the oppression of an occupation, in the shoes of a young
19 man who in 1967 saw his community invaded and a military order
20 imposed, in the shoes of a man whose family has a history in
21 fighting the occupation, in the shoes of a man who has gone to
22 jail, who stood up for what he believed and fought for what he
23 believed in a place where the world has abandoned.

24 I ask you to take that into consideration in
25 sentencing Dr. Ashqar, and I suggest to you that this is

1 unlike any other criminal case that you will ever have before
2 you again. This is not al Qaeda. This is not Osama bin
3 Laden. This is none of that. We are not at war with the
4 Palestinian people. They are not at war with us. And to the
5 extent that we support this occupation, they are angry with
6 us. But it's only human. That's only right and just that
7 they be angry with us to the extent that we support this.

8 He is not an angry man. And if you look at those
9 letters, nothing in those letters indicate that this is an
10 angry man who's looking for revenge against the United States
11 or that this was motivated by revenge.

12 I understand that you made a ruling about what you
13 thought this was motivated by, but I suggest that this was
14 motivated only by a sense of justice that exists in all of us,
15 and that's all I have to say.

16 THE COURT: Mr. Moffitt, are you making any specific
17 recommendation?

18 MR. MOFFITT: Well, I certainly am asking you, since
19 you have found the guideline being what it is, to depart from
20 that guideline, that the criminal history here is well
21 overstated far beyond what it was supposed to be. And I
22 suggest to you the guideline itself overstates this man's
23 involvement and why this man was involved.

24 Judge, I'm not going to make a recommendation to you.
25 I'm going to leave it to you to decide. You've heard all of

1 this. You know -- you've read all of the letters. You've
2 seen everything there is to know about this man. You've seen
3 what kind -- you get from the sense of it. If you remember
4 there is one letter that discusses the fact that when
5 Dr. Ashqar was running Al Aqsa, if you remember, there was a
6 student who wrote, and she said his charity was different from
7 everyone else's. He was looking for books, for educational
8 information, and that was why she contributed books and what
9 have you.

10 This man, if you remember his speech in the
11 Philadelphia, his speech was about education and what the
12 Palestinian people have to do. He was always trying to get
13 other people here to do that.

14 And I suggest to you one of the problems with
15 education is it makes oppression more difficult to stomach.
16 The more educated you become, the more -- the harder it is to
17 stomach oppression. As long as you remain ignorant and
18 powerless, it's much easier to stomach oppression. And the
19 people who found this country were the intellectual leaders of
20 their communities, just like Dr. Ashqar.

21 I've talked long enough. I've said what I had to
22 say. Again, I'm very proud to be standing with this man.

23 THE COURT: Thank you, Mr. Moffitt.

24 MR. MOFFITT: Thank you.

25 THE COURT: If you need to sit until it's your time

1 to speak, you're welcome to do so. You can stand if you'd
2 like, but I see you leaning over, Dr. Ashqar, if you want to
3 sit until you speak.

4 THE DEFENDANT: That's okay. I'm going to stand up
5 for everything, Judge.

6 THE COURT: Mr. Schar?

7 MR. SCHAR: Judge, I want to start first with the
8 premise that there are two separate crimes and two separate
9 harms that have occurred here.

10 One is obviously the grand jury investigation for
11 which there's obstruction, and the second is the contempt,
12 which is actually a separate harm; that is, a judge's ruling
13 that was ignored and not abided by. So, there are two
14 separate ills for which defendant Ashqar has been convicted.

15 I do not want to belabor, Judge, what is at a minimum
16 the overwhelming evidence of the type of critical information
17 that defendant Ashqar could have provided to this grand jury
18 investigation. He was -- and this was demonstrated at trial,
19 on the phone with nearly every significant high-ranking member
20 of Hamas, including numerous founders, both in Israel and in
21 foreign countries such as Iran.

22 He was on the phone talking about the need to kill a
23 rogue Hamas member. He was on the phone discussing coming up
24 with a code of communications between Hamas members. He was
25 on the phone attempting to put Hamas leader Rantisi, one of

1 the founders of Hamas, in touch with the family of a Hamas
2 terrorist who had blown himself up on the way to commit a
3 terrorist attack.

4 He was on the phone discussing ways to protect Hamas
5 archives. He was himself, as the evidence has demonstrated,
6 an archivist. Countless documents, not just relating to
7 education, Judge, but relating to significant violent
8 activities by members of Hamas, including members he was in
9 touch with, were found in manners that only he to this day can
10 explain to the grand jury, to the government, such as the
11 Jarad document, the confessions which we've cited earlier, the
12 fact they were translated from Hebrew to Arabic.

13 Was he at the Philadelphia conference talking about
14 education? He was. He was at the Philadelphia conference
15 also talking about defendant Salah and the need to be careful.
16 And to this day, we don't know all the members who were at
17 that conference because those answers remain locked in
18 defendant Ashqar's head.

19 In the face of overwhelming evidence, defendant
20 Ashqar's significant role in Hamas, the government and, in
21 essence, the grand jury, went to him and granted him blanket
22 immunity for his involvement in order to attempt to unravel
23 several things. First, to understand the Hamas terrorist
24 infrastructure in the U.S.; second to understand the full
25 scope of the involvement of Hamas members in the United States

1 and abroad in obtaining funding for Hamas terrorist activity;
2 and, third and critically, to learn about past and ongoing
3 terrorist activities both in the United States and abroad that
4 impacted the lives of numerous individuals -- and this is
5 critical, Judge, based on what I just heard Mr. Moffitt say --
6 including the lives of American citizens.

7 There was a long discussion just now about how this
8 is a two-state war that has nothing to do with the United
9 States. And time and time, again, Judge, the evidence has
10 demonstrated that there are Americans -- Americans -- who are
11 losing their lives through Hamas terrorist attacks.

12 When Mr. Moffitt says no one here is being
13 victimized, I would have a difficult time explaining that to
14 the family members of people who were sitting in the United
15 States who have lost loved ones through terrorist attacks,
16 whether it's bus bombings or bullets in the head, because they
17 were in the wrong place at the wrong time when Hamas decided
18 to commit a terrorist attack.

19 This was never a case about the United States
20 providing information to the Israelis. The Chief Judge made
21 crystal clear when Mr. Ashqar was taken before him that the
22 information he provided could not be shared with the Israelis.
23 That was taken off the table very early.

24 Judge, in short, the government's goal, as it has
25 always been, is to determine the extent of any criminal

1 activity, if any, that was occurring or still is occurring and
2 how such criminal activity could be stopped within the United
3 States in the hope of saving lives, including the lives of
4 Americans. And as you'll recall, Mr. Ashqar was brought to
5 the grand jury at a time of increasing terrorist attacks
6 between 1998 and 2003, many of which claimed the lives of
7 Americans.

8 Despite being willing to forego his prosecution for
9 his criminal activity by granting him immunity, as we know now
10 obviously, Judge, defendant Ashqar refused to testify.
11 Despite being told by both the government, and at one point in
12 the transcript, Judge, the foreperson of the grand jury
13 informed the defendant Ashqar he was actively impeding and
14 obstructing their terrorism investigation, defendant Ashqar
15 refused to testify. And indeed to this moment, to this moment
16 as we sit here, he holds within his head critical information
17 from the government's perspective regarding criminal activity
18 that has occurred within the confines of the United States
19 that only he can help bring to light.

20 And I think, Judge, the evidence makes fairly clear
21 that he knew, he knew very well that if he told the truth
22 about his activities, about the activities of other Hamas
23 members, his information would, in fact, significantly assist
24 the government in determining exactly the scope and level of
25 Hamas criminal activity in the United States and very likely

1 could have led to additional charges being brought.

2 We have heard repeatedly, your Honor, that all
3 defendant Ashqar wants is to be afforded the protections of
4 the Constitution, and yet the fact remains he's been afforded
5 every constitutional right to which he is due from the moment
6 he walked into the grand jury to his conviction in this
7 courtroom, and yet it is he, defendant Ashqar, who has refused
8 to abide by the civic duties required of every individual in
9 the United States. Now, obviously, most specifically that
10 legal duty that comes with being called to a grand jury, being
11 legally ordered by a judge to provide such testimony and the
12 need to, in fact, provide that testimony.

13 Defendant Ashqar, despite enjoying all of his
14 constitutional rights, has failed in return to comply with his
15 civic duties. And he didn't make a split-second decision to
16 obstruct justice, Judge. He came to the grand jury with a
17 prepared statement knowing full well what he was going to do,
18 that he would never assist, as you pointed out, this grand
19 jury investigating terrorism despite the government's
20 willingness to engage him in conversations about whatever he
21 felt was important or needed to protect both his well-being
22 and the well-being of his family.

23 And when defendant Ashqar went into the grand jury
24 room and refused to assist the grand jury, he made a decision,
25 a decision that had significant ramifications. He made, in

1 essence, a decision to take over the grand jury's role. He
2 made a decision that he, he alone, would determine what was
3 and was not important for the grand jury. He chose to protect
4 Hamas members. He chose to protect Hamas activities. He
5 chose to do what he could to make sure the grand jury would
6 not be able to uncover terrorist activity. In short, Judge,
7 he chose to stand with Hamas over the law.

8 The guideline range unquestionably is significant in
9 this case, but in many ways it also makes sense. Because
10 defendant Ashqar chose to help make sure there were certain
11 Hamas members, certain terrorists who would not be brought to
12 justice. And so he chose to sit in the well of this courtroom
13 and accept their jail time, instead of allowing a grand jury
14 to determine whether they would face indictment and a petit
15 jury to determine whether or not they would be convicted and
16 face time.

17 Judge, every individual, every individual -- and this
18 is not a case where a message is going to be sent to one
19 particular people or to another particular people. If
20 anything, a message should be sent that when called upon to do
21 so, every individual must abide by the law and assist a grand
22 jury's attempt to uncover information about terrorist
23 activity. No person -- no person -- is above the law. No
24 person, including defendant Ashqar, may decide by him or
25 herself what is or is not important to a grand jury's

1 investigation, particularly one dealing with terrorism.

2 No person on his own may take over the grand jury's
3 role and decide whether a crime has occurred or whether or not
4 he's simply a freedom fighter and, therefore, no crime has
5 occurred. And yet that is exactly what defendant Ashqar has
6 done. To determine that anything that he has done is
7 permissible or should not be severely punished, Judge, would
8 lead quite simply to chaos, a chaos in every case. No
9 individual decides what is and is not important.

10 Accordingly, Judge, it is the government's view,
11 respecting your rulings, that a sentence within the
12 recommended guideline range is appropriate, and that's what we
13 would ask you to impose in this case.

14 THE COURT: Dr. Ashqar, before the Court imposes
15 sentence, is there anything you would like to say, sir?

16 MR. MOFFITT: Dr. Ashqar would like to take a break
17 for a moment.

18 THE COURT: Okay. Ten minutes, is that sufficient?

19 MR. MOFFITT: Yes.

20 THE COURT: We'll pick up in ten minutes.

21 (Brief recess.)

22 THE COURT: Before we broke, Dr. Ashqar, I asked you
23 if there was anything you would like to say before the Court
24 imposes sentence, sir.

25 THE DEFENDANT: Certainly, your Honor.

1 Can I proceed?

2 THE COURT: Please.

3 THE DEFENDANT: Okay.

4 In the name of Allah, the most compassionate, the
5 most merciful, honorable Judge Amy J. St. Eve, respected
6 counsels, reporters, brothers and sisters. November 6, 2007,
7 two days before last sentence hearing, my nephew, Assam Ashqar
8 appeared in front of a martial court to renew his
9 administrative detention. He was detained in March 2006.

10 In January of that year, he was promoted to full
11 professor in physics. He was a former chairman of department
12 of physics at Najaf National University. Two months later, he
13 was detained. He was taken at 2:00 a.m. in the morning in
14 front of his wife, his six kids. He was taken, put away and
15 placed over detention center.

16 He was given six months by the administrative
17 detention, then kept extending. On that date, he was given
18 another four months.

19 So, when he finish -- when he finishes these four
20 months, it will be two years, and they could extend that. And
21 they put just one offer on the table: Leave -- you can leave
22 this jail if you agree to leave -- to deport -- to be deported
23 voluntarily.

24 His brother Hasan, my second nephew, he's the mayor
25 of my town and assistant principal of the school. March this

1 year he was taken. At checkpoint, he was taken, placed in
2 administrative detention, given four months, extended four
3 months. That was March 18th. Yesterday -- day before
4 yesterday, I'm sorry, he was released from jail after spending
5 eight months. No charges, no indictment, no trial, nothing.
6 Just for security reasons, the martial court extended that
7 administrative detention.

8 As of now, there are 2200 Palestinian prisoners in
9 administrative detention, civic leaders, mayors, university
10 professors, trade union leaders, student council -- student
11 activists and so on and so forth. This has been going on
12 since 1967. Almost 20 percent of the detainees, except in the
13 first uprising, are placed in administrative detention.

14 October 22nd -- 22nd, '07, 2:00 a.m., a unit from the
15 Israeli Army called Nafshun raided a Negev desert -- Negev
16 jail. It's in the middle of Negev desert. I heard the news
17 that 250 detainees have been injured. My nephew Hasan who was
18 released two days ago wasn't there. I called the family and I
19 was told you have another relative there. His name is Hamnat
20 Zaltal Ashqar. He is injured, and he is in critical
21 condition. He's in coma in Siroka Hospital in Beer Sheva.
22 Around midnight of that day, he passed away. A bullet
23 penetrated his head, and they couldn't do anything to save his
24 life. He was 23 years old. He marks No. 192 of Palestinian
25 prisoners to be killed in Israeli jails since 1967. But from

1 the second uprising, 2000, he marked No. 68.

2 His brother, Lua'i, he was detained, subjected to
3 severe torture, and he was released seven months later half
4 paralyzed. As of now, they didn't even allow him to leave the
5 territories to seek treatment.

6 May 7th, 2006, my nephew is the son of my sister,
7 around midnight the Israelis raided his apartment. They
8 wouldn't even go, no chance, just start firing on them. No
9 chance to surrender even if they were wanted by the Israelis.
10 Looks that you were injured. They didn't allow any ambulance,
11 anyone to come and save him. In the morning, they allowed the
12 people to get in, looks that he was injured and he stayed for
13 some time alive, and he was writing with his blood on the
14 walls.

15 My sister, 2002, she had severe headache. They took
16 her in a car, no ambulance in my town, to the hospital in the
17 city about 11 miles from my town. The checkpoints, there are
18 four checkpoints from my town to that -- to that city. They
19 didn't allow her. She didn't look sick. They said she had
20 severe headache. They said no, nothing. At night, she
21 entered into coma. Then they allowed her. She stayed several
22 days in the hospital. She woke up from the coma. They said
23 you have to leave. We have no place for you in the hospital.
24 The number of injured Palestinians exceeded our capacity. You
25 have to stay home. 27 days later, she passed away. She was

1 about 50 years old.

2 Majid Samir Ashqar, another relative, again, he was
3 killed, target killing. They raided the town. They raided,
4 he's wanted. They killed him. No chance to surrender or to
5 be taken into custody. All of them were in their 20s.

6 Sayyid Solomon Ashqar, another relative, close
7 relative. He was killed in September, 2005, the same way
8 others were killed. His brother, Rommi Balil Ashqar, he was
9 killed in December, 2003, almost two years and three months
10 after that.

11 Zahi Azel Ashqar, he was killed in July, 2004. And
12 they demolished his home. Not an action, nothing. And Damri
13 Adil Ashqar, Moelia Ahmad Al-Ashqar, close relatives. They
14 were opening the door of their repair shop store. It
15 exploded. It was wired by bomb by the Israelis, and they were
16 killed. They were in their 20s.

17 Amilis Idil Ashqar, August, 2002, she was opening the
18 door of her store, and it just exploded. Her son was wanted
19 by the Israelis. She was in early 50s, and she was killed.

20 Her son-in-law was killed, although he was half
21 paralyzed. The list goes on and on.

22 From my family, just from my family, since 2002 up to
23 this moment, eight have been murdered by the Israelis.
24 Neither Mr. Ferguson, neither -- nor Mr. Schar talk about
25 it -- them. And they don't care to talk about them. The only

1 thing they do care about is to talk about the Israelis, as if
2 we don't count, as if we were no human beings.

3 Yes, we are not Americans and they are not Americans.
4 But the number of Palestinian-Americans who have been killed
5 by Israelis exceeded the number of Americans, although I do
6 care and I feel sorry for every drop of bloodshed. Exceeded
7 the number by tens of times.

8 And it was represented earlier on by Mr. Deutsch to
9 this Court the list of Palestinians who -- American
10 Palestinians who were killed by the Israelis. But no one talk
11 about them. Unless we talk about them, who is going to talk
12 about them?

13 I don't trust anybody to talk about them unless we
14 talk about them.

15 Judge, my saga with the Israelis goes on and on and
16 goes for centuries. Not decades, centuries. 1897 my father
17 was born. In that year, his father was taken into custody for
18 standing up against oppression and corruption. He spent six
19 years in jail. At that time, Palestine was part of Ottoman
20 Empire or under Turkish rule -- rule.

21 At that time, Palestine was under Turkish rule or
22 part of the Ottoman Empire. 1917, Palestine -- in 1917
23 Balfour -- issued what's called Balfour Declaration in which
24 it grants Palestinians -- Israeli homeland, Jewish homeland in
25 Palestine. And that then started revolutions. It started

1 civil disobedience. 1920, Palestine fell under British
2 mandate, and the problems started since then.

3 They allowed the Jews from all over around the world
4 from Manhattan, from New York, from Chicago, from Russia, from
5 Europe, from Eastern Europe, from Africa, from Middle East to
6 immigrate and in the other -- to immigrate to city, to buy
7 land, to arm. And the Palestinians not to get arms, bars
8 embargo, and anybody who gets a piece of arm faces capital
9 punishment and embargo, a political embargo, to force them to
10 sell their lands to the new immigrants.

11 In 1936, there was six months civil disobedience by
12 Palestinians to protest the Jewish immigration to Palestine
13 and the British complicity with the new immigrants. My father
14 was detained by the British, and he was placed in a jail
15 called Jeffer Detention Center. And he was accused of
16 participating in civil disobedience and conflicting with the
17 event, et cetera.

18 Anyway, the deal was like that, your Honor. And I'd
19 like you to listen, please -- everyone to listen.

20 Okay. At that time, Palestine, there were no roads,
21 routes, roads between -- just between cities, not between
22 villages and cities. And the British soldiers used to move
23 from one place to another on horses. And they need to move
24 their arms, their food, supplies. And they used the detainees
25 as animals to carry their arms, food and supplies. And they

1 said, okay, if you carry this can of food, meat, can food, you
2 could be released in one week. If you carry this, in two
3 weeks, in one month. And they came to my father.

4 He said, I'm not an animal. I'm not -- you cannot
5 treat me like -- with dishonor. I'm a human being.

6 He spent six months, and he was released after that.

7 Not a long time after that, the same situation
8 continued. In 1948, Israel was established and a new era in
9 the life of Palestinians started. It was established in 78
10 percent of the historical land of Palestine. There was no
11 Israel before. It was established, 78, and according to U.N.
12 statistics, about 700,000 Palestinians were forced out. Every
13 day I'm reminded with this tragedy and a black moment in the
14 history of the human being with my family, with my wife's
15 family.

16 They were living in a town called Masmir Kabira
17 between Tel Aviv and Jerusalem not far away from Tel Aviv.
18 North of Tel Aviv, they were forced to Syria and Lebanon.
19 East of Tel Aviv, they were forced to West Bank and Jordan.
20 South of Tel Aviv, which is the case of my wife's family, they
21 migrated to Gaza.

22 Usually, Haganah and other Jewish organizations used
23 to raid the village or the town, start to shoot, and they give
24 the people -- the citizens or the inhabitants just an hour or
25 so to leave the town. They used to leave with nothing. Her

1 grandpa used to own wheat mill, wholesale business, citrus
2 grove. He left with nothing. Even sometimes the families,
3 some went to the south, some went to the north. They didn't
4 know about each other. What happened?

5 They went to Gaza. There was no infrastructure,
6 nothing. They stayed -- some of them who had relatives stayed
7 with them. Others stayed nowhere. They thought it could be
8 days. They didn't have even money. Her grandpa who was so
9 rich, he couldn't have any money to spend. It took months for
10 the United Nations to get involved. They provided them with
11 tents. That's all.

12 It took until 1952, they were able to settle in
13 camps. They settled in small, tiny, made-of-zinc houses. And
14 with the help of U.N., they were providing them with
15 necessities, just the basics to survive. Even the medical
16 assistance, it was almost nothing. No work. Nothing. You
17 know, it was no infrastructure whatsoever.

18 And they were not -- it took them years and years to
19 wake up from the shock, to leave everything in one night and
20 to find themselves living in refugee camps. It started, as I
21 mentioned, with temporary houses made of zinc. Then it was
22 promoted to what is banned in the U.S. now, to asbestos. And
23 they are still living in these houses up to this time, the
24 21st century. In houses made of bricks, covered with asbestos
25 up to this moment.

1 And they settled in what's called Jabalya camp, which
2 is more to 60 to 70,000 live there, generations and
3 generations. The only thing they could do, the U.N. started
4 to open schools. And my deceased father-in-law at that time,
5 he finished. He was teaching while he was in the Middle East
6 school. And he was given three kilos of lentil and three
7 kilos of chickpeas. By the time he finished -- three kilos,
8 about 6.6 pounds of lentil and 6.6 pounds of chickpeas.

9 In the early '50s, they start to get -- to look for
10 works -- for work. Nothing in Palestine. Nothing that -- 20
11 percent left Palestine. So, they started to migrate to
12 Kuwait. My father-in-law, when he finished high school, he
13 got a job as a school teacher in Kuwait. My half brothers
14 migrated to Kuwait to get any work. Doesn't matter. Just to
15 get any work. They start to work and subsidize their families
16 back at home.

17 And my father-in-law, he started to work as a school
18 teacher and to work on his degree. He finished bachelor
19 degree in Arabic language at University of Lebanon afterwards.

20 My brothers -- three brothers -- migrated to Kuwait.
21 And like many other Palestinians -- by the way in 1990, when
22 Saddam Hussein invaded Kuwait, there were about 450,000
23 Palestinians living in Kuwait just working. They start with
24 education. Working in any field just to do something because
25 in Palestine there was nothing.

1 In 1971, he passed away. And his family was given
2 few months to pack up and leave. Anyone who is not Kuwait
3 cannot stay there unless he is doing some work. They are
4 not -- although my wife, for instance, was born there, but she
5 was not given the Kuwait citizenship.

6 She went back to Gaza to start another struggle. The
7 whole family went back to Gaza in a tiny town. When we talk
8 about Gaza, they think that, you know, it's like a state or --
9 it is 100 -- 250 square miles. Now 1.5 million live there.

10 And only five -- five check -- entrances to that, all
11 of them now they closed. Nothing can go inside or outside,
12 even after the Israelis withdraw from Gaza, without the
13 permission of the Israelis.

14 For instance, the case of my brothers who moved to
15 Kuwait, because their income was below a certain level, they
16 were not allowed to bring their families. Their families
17 stayed at home, my hometown. They used to go one year, get
18 back. At that time, there was no communication, no phone
19 calls. Letters used to take one month or two months. Money
20 wires to go to -- the same thing, they used to wire to Amman,
21 Jordan and they have to send a letter to pick it up from
22 there. Something like that.

23 But 1967, when there was another turning point in our
24 lives. I was born in 1958. At that time, I was nine years
25 old almost, and new influx of immigration of migrants started

1 again. But this time to Jordan and to other. According to
2 U.N. statistics, 2,000 -- 209,000 were immigrated from West
3 Bank and Gaza Strip to Egypt, to Jordan and to everywhere.

4 Nowadays, the size of population of Palestinian
5 refugees in the world are 6 million. 3.5 million live in West
6 Bank and Gaza Strip, and 1.2 million live what's called Arab
7 Israel. And nowadays, the Israelis, they are talking about
8 transfer. Not the transfer of us only, transfer of the Arab
9 Israelis to be forced out because this is a Jewish state.

10 Your Honor, in 1967, I was a student in the school,
11 elementary school. We used to have an elementary school.
12 Three classes before the Israeli occupation, three teachers.
13 Every two classes in one classroom. After 1967, we just had
14 one teacher for the six grades.

15 We learned one thing since 1948. The only thing to
16 live if we want to live in honor and dignity, we don't have
17 much resources, the only thing we do, we can do is to continue
18 our education. To live in honor and dignity, that's the only
19 thing we can do, because we are determined to live in honor
20 and dignity. We don't want to live any life -- any kind of
21 life.

22 So, the elementary school, we finished the elementary
23 school. At that time, as I mentioned, three classes. No
24 running water. No running sanitation. No sanitation. No
25 health center. No phone service. No electricity. Nothing.

1 It took us until 1971, end of 1971 to get electricity by
2 generator for four hours every night. We used to read on
3 kerosene candles, to read like that (indicating), and in the
4 morning to have the ashes in our noses.

5 Health center, it was not built until 19 -- until the
6 end of 1970. And just a nurse and the doctor used to come
7 once a day for half a day, and the nurse to -- just to give
8 shots and stuff like that. And if we need a doctor, we have
9 to go to the city. Every city is surrounded by a cluster of
10 villages. My town, Tulkarim, is surrounded by 60 villages
11 until early '90s.

12 We used to go to the city to private physicians and
13 there was a hospital. We have to pay -- although it's
14 governmental, small one, but we have to pay for it and it's
15 very primitive.

16 I finished the school, but that's not -- you know,
17 our concern was the school. Our families pushed us for to
18 continue our education. We used to have citrus grove, as
19 Mr. Moffitt mentioned -- I'm sorry, black plum grove, olive
20 trees, apricot, almonds. But these are -- you know, when the
21 season comes, we have to collect it in days, and we have to
22 sell it, except the olive. The markets, no markets.
23 Sometimes we have to sell it at a cost below shipping cost.
24 Happened in 1967, 1968. So, we have to remove the black plum,
25 the cherries, the apricot. What we left with is olive trees,

1 and it gives every other year the harvest. We collect it
2 every other years. Because it doesn't -- I don't know why, it
3 doesn't give harvest every year.

4 And that's the only thing left because we can store
5 it. The rest we cannot store it.

6 And settlements start to take over our lands.
7 Nowadays settlements take more than 40 percent of our land,
8 occupies more than 40 percent of our lands. What can we do
9 about it? To complain to U.N.

10 As of now, hundreds of U.N. resolutions, none has
11 been implemented when it comes to the Israeli issue. None.
12 Zero. Zilch. Why? Because we are not counted. As I have
13 been watched through the course of this trial, we should
14 suffer and we should continue to suffer and we should beg for
15 standing -- for standing up for our people and standing up to
16 live in honor and dignity.

17 I finished the high school -- the elementary school.
18 There is no middle school in my town. We have to go to
19 another village. Two miles in the morning going down the
20 hill, two miles in the afternoon, no transportation, no
21 whatsoever.

22 We finished middle school. We went to the high
23 school. It's five miles from my town. Sometimes we could
24 find transportation, sometimes we have to walk, and sometimes
25 we cannot use the road because there are some demonstrations

1 somewhere, and the Israelis might detain the students. So, we
2 have to go through agriculture or scenic roads.

3 Your Honor, I went through this for one just purpose,
4 to live in honor and dignity, and we had an opportunity. I
5 didn't wait until 2002 or 1996 to be given that opportunity to
6 live as a traitor or as a collaborator. I was given that --
7 everyone was given that opportunity to serve the Israelis, to
8 provide information, to become an informant for the Israelis.
9 We didn't have to go to school. "Just work as an informant,
10 and we could protect you." We had that as informant. But we
11 are determined to live in honor and dignity like any other
12 human being as long as it takes.

13 I went to the university. I didn't want to go. I
14 got an admission at university in Jordan. I didn't want to go
15 to Jordan. I didn't want to go anywhere. I want to stay in
16 my homeland. Although it was costly, I went to the
17 university. I enrolled at university in January 1978.

18 I was taking, as I have been as a student, to take
19 every opportunity to finish as early as I can. And that's
20 what I did. I used to take the summer course. But during
21 that time, during I should graduate in 1981 -- anyway, during
22 the course of my education at the university, the university
23 was closed in different times for one years by the Israelis.
24 One full year, two months, three months, two months, three
25 months, and so on and so forth.

1 Each time there is a demonstration, Israelis come,
2 raid the university, fire tear gas, rubber bullets, live
3 ammunition, injure some students, then a military order
4 closing the university because consider it as military zone.
5 One year. One full year.

6 Anyway, in 1981, in November 2nd, Tulkarim before
7 declaration, there was an administration at the university
8 speech. Within the university. The Israelis besieged
9 university. They didn't allow anyone in or out. By the
10 afternoon -- by the evening, they allowed the students to
11 leave after the Red Cross intervened and with the
12 administration to allow the students leave peacefully, and we
13 left. Half an hour later, Israelis raided my home and
14 arrested me and I was charged with participating in actions
15 against the Israeli Army.

16 During the trip from Bir Zeit University to the
17 Ramallah detention center, it was like eight miles. During
18 that we were kicked, beaten in the head, on our knees, by all
19 means, by the guns in their -- to press on our feet. And we
20 were hurt whatever you could imagine from words like donkeys,
21 animals, stuff like that.

22 Then we were presented with Hebrew. "Sign it, sign
23 it."

24 "What's that?"

25 They say, "This is indictment."

1 "What is it? We have not done anything."

2 I was placed in a small cell with five detainees,
3 sometimes seven. There are 16 students in that day. There
4 was no bathroom in that room. We were given two jars, one for
5 drinking water and one to use it for urine and if we needed
6 for bowel movement.

7 During the day, they used to allow us once to use the
8 bathroom in the other room. And it was no heat, and it was so
9 cold in Ramallah at that time. And the doors are bars. It's
10 so cold. We given just a few blankets, and we have to manage
11 to keep ourselves warm.

12 I was -- we, after next day, they -- all universities
13 went to the administration, and after 16 days they decided to
14 release us. We were given, like here, some -- some what's
15 called options. "What are these options?"

16 "To plead guilty. Time served and you pay fine, you
17 go home."

18 "But I'm not guilty."

19 "Okay, you have another option. Testify not against
20 the whole people or against some people you know, just against
21 one of the students who were arrested with you, and we'll set
22 you free like that."

23 "I can't do that."

24 "So, okay, you are going to face a trial and you
25 might be placed for your life in jail because facing the

1 Israeli Army is a serious, serious crime."

2 "Okay. Do whatever you want, but I have not done
3 anything wrong. I have not -- I just commemorated the
4 anniversary. Is that even too much for me to do?"

5 We were released. We were brought to the court just
6 once. We paid -- the university paid a fine. We don't know
7 what happened to that. And after that, they didn't call us
8 because they knew there was no case.

9 And, you know, detaining Palestinians as of now --
10 and I'd like everyone to know, Mr. Schar, Mr. Ferguson,
11 Bradley Benavides, Mr. Bradley Benavides, Mr. David Bray,
12 Mrs. Jill Pettorelli, Ms. Kelly Rice to know as of now 650,000
13 Palestinians have been detained. If you take -- it's 20
14 percent of the whole population. But if you know that, like
15 95 percent of the them are men. Men detainees. And know that
16 about 60 percent of the Palestinian who are under here, then
17 you come to conclusion more than 70 percent of other pop --
18 men population have been detained for nothing.

19 Just they want them to become informers. This is the
20 first offer on the table. Or to curse them, to threaten them,
21 to scare them, or to have them -- subject them to too much
22 torture. Once they are released, hoping that they will depart
23 and live in diaspora.

24 As of now, 650,000 Palestinians, 650,000
25 Palestinians, as of now more than 1100 -- 11,000 Palestinians

1 are in jails in substandard conditions. Negev desert that I
2 told you about just a few minutes ago, there are 2400
3 Palestinians in that -- detainees, political detainees. 1,000
4 in permanent buildings. 1400 in tents in the middle of the
5 desert. Many, many times you woke up to find a snake sharing
6 just the warmth or other reptiles sharing the warmth under the
7 blanket.

8 You, Judge -- your Honor, these are some. As of now,
9 more than 5,000 Palestinians have been killed not since 1967,
10 but since 2000. They are killed by Israeli Army. 224 target
11 killings. In a missile they leave nothing sometimes with
12 them. They fire missile at a human being. And I never heard
13 Mr. Ferguson or Mr. Schar call it terrorism. To leave -- to
14 collect their parts from trees and from stones, this is not
15 terrorism because it is held -- it's conducted by what's
16 called democracy.

17 Well, to be fair, I think we have to be sorry for
18 each drop of blood, whether from Israelis or from
19 Palestinians. This is, I think, it is -- it's an education
20 for human beings, not just asking for extra for their minds
21 for being educated or being officials. We have to be careful.
22 If they are weak and couldn't stand for themselves, we have to
23 stand up for themselves. We have to talk about their
24 sufferings and to expose their atrocities, the Israeli
25 atrocities. And that's what I have been doing since I came to

1 this country.

2 Your Honor, I finished bachelor degree 1982. I
3 couldn't find a job. As I mentioned, no infrastructure, but I
4 have an opportunity to become an informant and to become rich.
5 But I never tried to build a career in espionage or
6 intelligence. It's not in my mind. It's not -- I'm not that
7 type of person to hurt any human being whomever that human
8 being is.

9 I couldn't find a job. The only opportunity to find
10 a job in my field is to immigrate to Saudi Arabia. I didn't
11 want to immigrate. I want to live and die in my homeland.
12 That's as simple as that.

13 So, universities were established. The Israelis
14 allowed a few universities to establish and expand. There was
15 only one university, Bir Zeit University. It started in 1973.
16 Another one start, Najaf National University in 1978. Then
17 they start to allow Islamic University of Gaza in 1978, too.

18 And we are -- when I got an admission at Middle East
19 Technical University in Turkey where the language of
20 instruction is English because at that time, I did not want to
21 spend more time studying languages.

22 By the time we got there, we're faced with the
23 reality that we are Palestinians, and we don't have much -- we
24 don't have many opportunities like other human beings. Our
25 admissions were cancelled. They said, you know, there was a

1 military court, and they treated Palestinians as an extension
2 for leftists. So, they cancelled our admission.

3 I didn't know what to do. I was told there are some
4 American universities in Greece. So, I traveled to Greece,
5 and I get an admission at an American university there, which
6 was established to serve the needs of the military personnel
7 at American bases in Greece. I never looked. We always look
8 high to the U.S. as a country of opportunities, state-of-art
9 education, state of art in everything.

10 I got an admission in that university, and I was
11 given permission to enter the American bases whenever I
12 wanted. I never did because I have nothing to do. I don't
13 need to know anything about that. All my courses were off the
14 bases.

15 So, I finished in 1985. I got an opportunity to work
16 at a bank in Greece. They were badly in need for Arab
17 graduates to work who know English, know Arabic, and at that
18 time, I was -- I knew, I could say I knew Greek language. I
19 didn't want to stay overseas. I went back.

20 And in that year, 1985, the Israelis deported 60
21 university professors from the Islamic University of Gaza.
22 Why? Because they are Palestinians. They have rights, but
23 because when the Israeli occupation took place in 1967, they
24 were studying abroad. They were not -- so they don't have the
25 right to live in that country. They don't have the right to

1 live in their homelands. They were given permission to teach
2 at the university. In that year, for political reasons, they
3 revoked their permission. And they were badly in need for
4 staff, you know, the academy staff.

5 I got a job as lecturer at school of business to
6 teach business, and it was another shock in my life. I went
7 to the university. I never been to that university before.
8 And reminded me of the atrocities of the occupation.

9 The university, there's a permanent building called
10 administration. Classrooms were held in temporary buildings,
11 covered with asbestos. Covered with asbestos. When it
12 rained, we couldn't teach. We have to stop. There were 5,000
13 students in that university.

14 I was teaching -- I was, you know, because of a
15 shortage of the number of professors, there were 120 students
16 in the senior level. This is the small size of class. And
17 sitting on chairs, no issue -- as I mentioned, no carpet, just
18 on that -- and asbestos. Covered with asbestos. That's it.

19 At 1986, I was given the position of director of
20 public relations department. Honestly, I accepted, although I
21 knew it was costly, but it was an opportunity to expose the
22 atrocities of the Israelis against my people.

23 I visited the camps, and it tells the story. As I
24 mentioned, covered with asbestos, open sanitation, kids
25 playing in that, no medical, health -- no health coverage for

1 everybody. Just schools run by United Nations, and it looks
2 like jails. No accommodations, no AC. They have to stand in
3 line and forced to drink milk in the morning and to take some
4 tablets, vitamins or fish tablets, or I don't know what's
5 called in the morning, and my wife went to that school, to
6 these schools, these type of schools and her sisters and
7 brothers.

8 I started -- then the Israelis went after me. I was
9 summoned the first time and threatened. By the end of '86
10 they given -- they gave me 24 hours to leave Gaza Strip, and
11 they said we are fed up with you. Why? Because I was the
12 editor of the university magazine. I was meeting with
13 diplomats from different diplomatic missions in Tel Aviv and
14 Jerusalem, meeting with reporters, talking of the Israeli
15 atrocities against my people and against the university. It
16 was not recognized. The president of the university was
17 deported. As I mentioned, in one year, 60 were forced out.
18 And more than that.

19 Each time there was a meeting in the university or a
20 commemoration of any universities, the Israelis used to
21 besiege the universities. Sometimes, and in one incident in
22 April '87, the Israelis raided the university with bulldozer.
23 They damage whatever they could damage. 80 students were
24 injured. Ten cases of abortion because of the tear gas.

25 And just I wrote about it. I was summoned. At that

1 time, I was a newlywed, and I was threatened with deportation
2 unless, unless I stop talking about the Israelis atrocities.

3 And my stand was like my stand today. I'm going to
4 speak for those who cannot speak up for themselves. Shortly
5 afterwards, the uprising started.

6 At that time, 1985, '86, I applied for U.S. Thomas
7 Jefferson fellowship. It is financed by USAID, administered
8 by Amethyst. And they grant a scholarship for every year for
9 a Palestinian in each field. One year in business, physics,
10 engineering, education and stuff like -- so, I applied in
11 1985. I got the admission in 1989.

12 The uprising started in '87. December '87. And the
13 university was closed. My wife was a student at the
14 university. She couldn't finish her diploma. She was in the
15 last year. The university was closed. Not just Islamic
16 University of Gaza, all universities, all schools, all
17 kindergartens were closed. It was not closed for one year.
18 No one talked about it. It was closed from December '87 until
19 1991, '92. All academic institutions from the kindergarten
20 until the universities were closed.

21 My wife was not able to finish her diploma until
22 1990. She was given these courses or the tests in these
23 courses by her professors in their homes. We were not allowed
24 to use churches or mosques or any public schools for teaching.

25 So, when the university closed, we couldn't do much

1 except to talk about what's going on. In 1989, April, 1989, I
2 got an admission. I didn't apply for it. Amethyst applied
3 for it. And I got the admission to the University of
4 Mississippi. Just I provided them with all documents and they
5 got the admission for me. I never dictated when I can go,
6 where to go. And I applied for a certain field, which is
7 business administration or operations management because we
8 were badly in need in the Holy Land for that major.

9 I got to the U.S. in November 16th, 1989, 18 years
10 ago and five days. I enrolled in January. The reason I left
11 early, because in November 16th, marked the second anniversary
12 of announcing the Palestinian state. In 1988, it was
13 announced in -- by former PLO chief -- chair Yasir Arafat in
14 Algeria in 1988. And there was demonstrations, and we lived
15 under curfew for 16 full days. At that time, I was in Gaza
16 living -- I'm original from West Bank. At that time, I was in
17 Gaza. I was living in Gaza at that time moving between Gaza
18 and West Bank.

19 Then was curfew. Full week without any interruption,
20 without any break. After one week, they allowed us two hours
21 to get supplies, food and medicine. After two hours -- after
22 one week for two hours. Then they started to allow us every
23 day or every other day for two hours for 16 full days.

24 So, I decided to leave in November 16th in the second
25 anniversary. I was afraid that curfew might be imposed, and I

1 would not be able to leave. And I didn't leave easily. The
2 Israelis didn't allow me to leave. I wanted to catch the
3 first semester, to enroll in the first semester, but the
4 Israelis didn't allow me.

5 And we have to get authorization, permission to
6 leave. And they didn't leave -- and, you know, I start to
7 seek permission. I applied for permission. I obtained an
8 attorney, and they said you need to see the intelligence
9 department. I did. And I met what's called Mr. Ben, alias.
10 This alias is not -- you know, it's part of our culture
11 nowadays.

12 Anyway, I met Mr. Ben. He said, well, we have
13 nothing against you, but you are an activist, and we don't
14 want you to go to the U.S. to become an activist. It's more
15 harmful for us to become an activist there than to become an
16 activist here.

17 I retained an attorney after while, big-shot attorney
18 as it's called. He was a member -- he was a minister of
19 Menachem Begin government. Anyway, he get me permission. I
20 talk to him. I met him the first time and said what's going
21 on? Tell me what's going on in your life. I told him. I
22 said nothing there but occupation. Makes your life miserable.
23 That's it. Pack your stuff and leave. It was Monday. He
24 said you can leave by Thursday.

25 Anyway, I get permission. At that time, my mother --

1 I got the permission, but my mother passed away. She was --
2 she had cancer, breast cancer. I waited until two months
3 almost after that, and I left.

4 I came to the U.S. I enrolled as a full-time student
5 taking every summer semester, teaching, working as a teaching
6 assistant, working as a research assistant. And the
7 scholarship was working fine with me. I was -- they used to
8 pay the tuition fees and allowance, books, everything and
9 medical insurance. Everything went fine in 1990.

10 '91, things started to change. I was told by
11 Mrs. Nancy Rogers, assistant director of international
12 programs, Mrs. -- referring student adviser Leslie Benningham,
13 they were contacted many occasions by Agent Steve Taylor, and
14 there he told them we have nothing against him. It is the
15 Israelis who instigated the investigation. We have nothing to
16 do against him. We have nothing to worry.

17 And December 17th, 1991, I was -- Mr. Taylor called
18 me and he met me. He interviewed me, and he said this
19 interview takes place per the request of the State Department.
20 I never -- again, I never looked at the U.S. -- I never
21 maintained a hostile relationship. I never looked at them
22 negatively. So, I went and I talked with them. It was eight
23 minutes. That's all. And he give me his card and said, okay,
24 if you face any problem, let me know.

25 But the inquiries continued. Each time I meet

1 Mrs. Rogers or Mrs. Benningham, they tell me that we were
2 contacted by FBI and by Mr. Taylor.

3 1994, that second interview took place, but before
4 that and that's what scared me the most, your Honor. In '92,
5 I finished the major comprehensive exam. In January '93, I
6 finished the comprehensive exam in the minor. In three years,
7 I finished the work, the course work. I passed the
8 comprehensive exams from the first time. I published two
9 papers. And I was teaching, working as a teaching assistant
10 or as a research assistant. Everything went fine.

11 I finished the comprehensive exam, ready to work on
12 my dissertation. The academic adviser, he was so helpful, so
13 understanding. Things have changed. When I call him, he said
14 where are you calling from? If I say from house, he said
15 okay, I'm busy now, I'll call you. If I say from the
16 university, he would talk with me. And I didn't know what's
17 going on.

18 I submitted the first proposal in my dissertation. I
19 was trying to finish in four years. I didn't want to stay. I
20 want to go back. That's what I came for. And I came on visa.
21 I never tried to change it. Before it expired, I wanted to go
22 back. That's where I wanted to live and die.

23 I submitted the first proposal. He said, well, you
24 have to change it. I talked with other committee members,
25 they said his name was Dr. Ed Gillimorter (phonetic), told us

1 not to read it. I knew something fishy was going on, but I
2 didn't know what's going on, to be honest with you. I would
3 not think that -- I would not think in my dreams ever it will
4 go to that level.

5 Anyway, second proposal, third proposal. Later on,
6 until September '96, he told me that I was interviewed many
7 times by agent, FBI Agent Mr. Steve Taylor. And he told me
8 that I was scared. I could change the university, but the
9 same thing could happen. And I couldn't go back without
10 finishing my degree.

11 October, 1994, 26th, Mr. Steve Taylor called me and
12 he said, "We need to see you."

13 I said, "Okay. How about tomorrow?"

14 He said, "No, today. Because there are some people
15 who wants to meet with you."

16 And I went there. It was Mr. Avery Rollins,
17 supervising special agent from Jackson, Mississippi, and
18 Mr. Taylor. And they said they didn't allow the director of
19 international programs to come with me. He was with me, but
20 they didn't allow him to attend the meeting.

21 Anyway, they said okay. This interview was taking
22 place per the request of the Israeli government. And we did
23 talk for one hour, 40 minutes. I didn't have any problem
24 talking with FBI. Again, I never viewed the relationship as
25 hostile, or I never looked at them as enemies. I have just

1 one enemy, the occupiers of my homeland. That's all. And if
2 they leave my homeland, then I would look at them like I look
3 at every other human being.

4 Anyway, your Honor, we talked about many issues.
5 They asked me about Al-Aqsa education fund, how much money did
6 you raise? Why did you establish it? How did you spend the
7 money? I talked about it.

8 I didn't have any problem talking with them because
9 I'm not doing anything wrong. I'm not -- I have not done
10 anything under the table. Everything in the light, everything
11 in the phone, from my house. So, I did talk to them about
12 everything.

13 By the end of the meeting, I said, "Okay, hold on, I
14 have just a few complaints."

15 They said, "Go ahead."

16 "Number one, I said we have been receiving harassing
17 calls for years. Each time my wife answers the call, they
18 said okay, where's Ashqar. If she said who is speaking, who
19 is calling, they would hang up.

20 "If I answer the phone, they would hang up."

21 I talked with them about what I repeat. Then I told
22 them about packages that we received without return address.
23 And I talked with them about some tampering with my credit
24 cards. I told them in one occasion, we receive adultery
25 movies ordered by 911 Jackson Avenue, Suite 242, Oxford,

1 Mississippi, 38655, and that is the address of FBI, ordered to
2 be delivered to my address and charged to my credit card.

3 On another occasion, Circuit City called to verify an
4 order. It was placed by your address to my address -- to your
5 address, I'm sorry, on my credit card for a camera. In a
6 third -- anyway, many occasions. I talked with them about.

7 They said, "Okay, could be the Israelis. We have
8 nothing to do with that."

9 And they ask me this question, and I'd like everyone
10 to hear it. They said, "Well, if you knew someone would harm
11 us, someone would do anything against the U.S., would you tell
12 us?"

13 I said, "Absolutely. I don't want anything -- I
14 don't want to see anyone do anything against anyone in the
15 U.S."

16 Our message is simple. We need to mobilize
17 Palestinians, Arabs, and Muslims and everyone to change the
18 American foreign policy. But that can be done through
19 political means, not through violence. And I have been saying
20 this in the board rooms, in my lectures, everywhere, anywhere.

21 They said, "Okay, go back to your normal life."
22 That's his words, Mr. Avery Rollins. "Nothing to worry about.
23 Go back to your normal life."

24 Although I was faced with the realities. The
25 apartment next to me was occupied by FBI. Besides bugging my

1 home, besides wiring my phone, besides since 1996 following me
2 wherever, whenever, the apartment next to me was occupied.
3 And I'm not psychic reader. No. I saw the FBI agent leaving
4 that apartment and black curtains on the windows of that
5 apartment. No one was leaving, going in or out, except one
6 time I encounter Mr. Taylor leaving that apartment.

7 So, I know I am under scrutiny, and I'm not doing
8 anything -- nothing to fear, nothing to be intimidated,
9 although my course of work, my dissertation was badly hurt. I
10 couldn't -- I continue -- the subjective, you know -- the
11 course work is objective, but the comp exams are subjective.
12 They started to contact my advisers in '93 after I'm done with
13 the course work, after I was done with the comprehensive exam.

14 But the dissertation is subjective work, and it could
15 be affected by everything. And I was trying to finish up
16 before my scholarship expired. And I don't want to live in
17 this country. I don't want to stay in this country. I want
18 to go back to my country.

19 February, '95, I fell -- fly down the stairs,
20 bouncing on my back and I fractured my -- I fractured the
21 coccyx. Anyway, it was displaced, and the pain has -- the
22 pain became chronic. I started the journey over treatment in
23 Oxford, Mississippi, Jackson, Mississippi, New Orleans,
24 Louisiana, Memphis, Tennessee. Then I move to north Virginia
25 and so on and so forth. Just -- I was living on painkillers.

1 I was taking two painkillers every four to six hours, plus
2 muscle relaxer, plus anti-inflammatory plus -- anyway, I was
3 fully dependent on medications.

4 '96, my wife finished the degree in '93 -- '93, '94.
5 She was not working. She got an admission for Ph.D. But when
6 she saw what I had been through, she decided not to pursue it,
7 to leave it there. She finished her master's degree in
8 education. She couldn't find a job in Oxford. She got a job
9 in New Jersey in '96. And we were ready to leave because my
10 scholarship expired. I couldn't work, and we need a source of
11 income. And she needs to do something. She couldn't stay in
12 a small town doing nothing.

13 Then Mr. John Hailman contacted me, chief of the
14 Criminal Division in the U.S. Attorney's Office in Northern
15 Mississippi. He contacted me. We were scheduled to leave on
16 Sunday. He contacted me on Thursday, September 5th. We met
17 at Nancy -- Mrs. Rogers' office at the University of
18 Mississippi.

19 And they said, "Okay, this is the situation. FBI,
20 CIA, INS -- or Immigration Naturalization Service, at that
21 time -- Criminal Division of U.S. Attorney concluded their
22 investigation. You have four options: Option 1, deportation;
23 option 2, subpoenaed to New York where the U.S. Attorney and
24 FBI offices are dominated by Jews who are pro-Israel; or
25 third, option 3, exposing whatever documents we have and

1 eventually Hamas would kill you; 4, helping us build cases.
2 Helping us incriminate some people."

3 I said, "Well" -- "and we can provide you with
4 protection. You have to change your name. And I'll find out
5 if your wife can call her sister." Her sister was living in
6 New Orleans.

7 I said, "Mr. Hailman" -- and he was presented to me
8 as pro-Palestinian. "Mr. Hailman, why now?" I said.

9 Just "We concluded our investigation."

10 I said, "Okay, listen, it looks from what you told me
11 I don't have four options. I have only one option because I
12 don't have control over the other options. You want to deport
13 me or if you want to subpoena me to New York or if you want to
14 expose whatever you have, I have no control over that. And if
15 you want to hurt me, don't seek my permission. The only
16 option is in my hand is to become a traitor or a
17 collaborator."

18 He said, "No, no, it's not like that."

19 I said, "Okay, call it whatever you want. Something
20 I can't do, I will not do as long as I live. I'm supporting
21 the cause of freedom, justice, equality. I'm not going to
22 turn against my people."

23 So, he said, "Okay."

24 I said, "Okay. Why now, again? Is it because I'm
25 moving to New Jersey?"

1 He said, "Yes. We don't want you to move because,
2 you know, there the FBI and U.S. Attorney offices are
3 controlled by Jews." Take it into my mind I was not -- I was
4 given that he's pro-Palestinian, although that contradicts
5 that. But I was not -- lack of understanding of the American
6 legal system, lack of understanding of -- anyway, I told him,
7 "Okay, what if we call it off."

8 He said, "Go back to your normal life, nothing to
9 worry about."

10 I said, "Okay, we'll call it off."

11 The hardest part was to convince my wife. We packed.
12 We were already packing our stuff, rented a truck, ready to
13 move, and she got a job contracted from Al-Azal School in New
14 Jersey. So, we call it off.

15 And I thought that the end of it.

16 October 2nd, 200 -- I'm sorry -- 1996, they called
17 me, said, "We need to see you."

18 I said, "Okay."

19 "Did you think about what our offer?"

20 At that meeting, there were Mr. John Hailman,
21 Mr. Avery Rollins, Mr. Jim Frere, the head of FBI Mississippi,
22 Mr. Steve Taylor, and Mr. Richard Calcano, supervising special
23 agent, the head of FBI office in Oxford, Mississippi.

24 And I said, "Okay."

25 "Did you think about offer?"

1 I said, "You know, there was no offer to me."

2 And they said, "Go back to your normal life."

3 They said, "Well, the Department of Justice in
4 Washington wanted to pursue this issue with you, and we need
5 your help and" -- anyway, he gave me a speech.

6 I said, "Sir, I'm not going to hurt any human being.
7 I'm not going to stand as a traitor or as a collaborator."

8 Then he said, "Okay. How about talking with your
9 wife and come back tomorrow with your wife." And I went. My
10 wife and I went and attended that meeting. That was October
11 3rd. The meetings were held in Ramada Hotel, not in the FBI
12 department or office.

13 Anyway, we went there, and they said what they said.
14 They repeated their offers, and we told them our stand.

15 Now, they moved to another thing, inducements. They
16 offered me citizenship for me and my wife, employment for me
17 and my wife, money to start business.

18 I told them, "Guys, gentlemen, you know, I don't want
19 to build a career in espionage or intelligence. I just want
20 to live in honor and dignity like any human being. I don't
21 want to become a traitor or collaborator. I don't want to
22 turn against my people."

23 "How can the world help an investigation initiated by
24 the government of Israel that you buy on my homeland against
25 my people, how do you want me to come and take the stand and

1 testify against them? Tell me."

2 Said, "Okay, what do you want?"

3 I said, "I don't want anything. Just let me live
4 normal."

5 Said, "Okay, how about helping you to become a
6 minister in Arafat's government?"

7 I said, "Okay, you know, it looks that you don't
8 understand me. To me, goal is important, but more importantly
9 for me how to pursue that goal. The means are more important.
10 If I want money, I could make it any way I want. Not to come
11 to the U.S. I could become an informant."

12 Then said, "Okay, think about it, and we'll talk
13 about it next meeting."

14 Next meeting, Mr. John Hailman showed up by himself
15 in the same hotel, and he said, "Okay, now we don't want you
16 to testify against anybody."

17 "Okay. What do you want me to do?"

18 He said, "We need your help to understand the
19 situation in Palestine."

20 I said, "Well, that thing I have been doing in
21 public, I have been doing in universities, I have been doing
22 everywhere. I don't have problem with that. But okay, this
23 is the -- I don't want -- please, don't ask me about anybody.
24 I'm not going to answer any question without my attorney."

25 Needless to say, your Honor, that in October 2nd

1 meeting I enlisted legal counsel, and in a way they told me
2 no. They said, well, this would hurt you, not help you.
3 Therefore, it's better not to have a legal counsel.

4 We met -- do you know how many meetings did we meet?
5 We met in October 2nd, October 3rd, October 7th, October 17th,
6 October 16th, October 18th, November 4th, November 20th,
7 December 5th, December 19th, January 23rd about 15 -- all the
8 meetings that took place since 1991 until that meeting, 15 --
9 almost 15 meetings. I didn't have any reservation. I didn't
10 have any problem to talk about general situation Middle East
11 to help them understand the situation.

12 I'm not an informant. I'm not an FBI analyst. I'm
13 not a CIA analyst. I was given a job to become an overseas
14 operations officer for CIA. I declined it. I don't want to
15 build a career in espionage or intelligence.

16 My ultimate objective was at that time to become
17 university professor. Things started to change, and I want to
18 get involved in politics later on. But at that time, I didn't
19 want to build a career in espionage. They offered me a job
20 with the CIA, and I could be stationed back in my home, but I
21 didn't want that. I received it in writing.

22 So, meetings continued, and at one point they
23 introduced Mr. Atkins. And they said, "Okay, things have
24 changed. Now national security service is taking control of
25 the investigation. It's not criminal. And Joe Atkins will

1 continue with you."

2 And I met with him, and he start to ask me questions
3 and I told him, "Per the agreement, I am not going to name
4 names. I'm not going to answer any questions without my
5 attorney."

6 Anyway, on December -- on January 24th, 1997, after a
7 sort of tense meeting, I told -- I inform Nancy Rogers who
8 organized these meetings, "I'm not going to meet with them."
9 And she conveyed a message to me from Mr. John Hailman: "We
10 are not going to let you live normally or peacefully, any
11 way -- any way."

12 I said, "Well, I think there is a law in this country
13 and this country's not run by Mr. Hailman. I'm not going to
14 intimidate -- to get intimidated by his statement, and I'm not
15 going to meet with him again. If they want me, they can get
16 in touch with my attorney."

17 I consulted after that with Mr. David Cohen,
18 Georgetown University, and Albert McKiver from Washington,
19 D.C.

20 February 14th -- March 14th, 1997, my adviser passed
21 away. April 27th I defended my dissertation. It was done for
22 a long time. I defended my dissertation and graduated in May
23 of that year, '97.

24 I moved after while in August of that year to
25 Washington, D.C. and started to work -- I didn't have any

1 valid passport. I used -- I came to this country on Israeli
2 travel document, renewable every year.

3 After the establishment of the Palestinian Authority
4 in '93, '94, they said you have to get a Palestinian passport,
5 we are not going to renew it.

6 And, unfortunately, I was denied a Palestinian
7 passport until 2003.

8 So, I didn't have any valid passport. I couldn't
9 leave. I start work with my passport to get a valid passport.
10 And I get a job to work to find a place to live until I can go
11 back to my homeland country. Although now if I go back, I
12 will not be able to be united with my wife. She is from Gaza
13 Strip. She cannot go to West Bank. I cannot go to Gaza
14 Strip. Everyone, we have to be apart.

15 I started to at least to watch things might change.
16 So, I try to get work on temporary basis until things settle
17 down and being able to get together. I watch then --

18 THE COURT: We're going to take about a ten-minute
19 break, Dr. Ashqar, and you can continue when we come back.

20 THE DEFENDANT: Okay. Thank you, your Honor.

21 (Brief recess.)

22 THE COURT: Dr. Ashqar, you may continue.

23 THE DEFENDANT: Your Honor, I was served the first
24 subpoena in November '97. I tried to leave the country
25 honestly. And I had an interview on Monday. Then I was

1 served the subpoena, I think, Wednesday or Thursday just a day
2 before the Thanksgiving and to appear right after the
3 Thanksgiving. And I informed them through my attorney that
4 I'm going to take the Fifth.

5 Anyway, they deferred it until February 20th, I
6 think. They sent me the subpoena. Two FBI agents were
7 waiting in front of my house, and they said the subpoena, they
8 said, "We need to talk with you."

9 I said, "Talk with my attorney."

10 They said, "We need to talk with you."

11 I said, "I think I did talk with you more than
12 enough."

13 And they said, "Either you talk with us or we serve
14 you with a subpoena anyway."

15 They serve me with the subpoena. I appeared in front
16 of honorable Judge Cote in New York -- Denise Cote -- and I
17 refused to answer any questions, and she held me in civil
18 contempt. I started hunger strike immediately, extreme
19 measures in extreme conditions. I have been through too much,
20 more than the comprehension of any human being. I don't
21 want -- I cannot -- I couldn't -- I cannot, I will not help
22 anybody build cases against my people or incriminate anybody.
23 I couldn't. I cannot, I will not hurt any human being.

24 I told them this is a political case, I'm not going
25 to testify. And I was held in civil contempt, and I took

1 again the extreme measure and extreme conditions to start a
2 hunger strike to protest the way I was treated by FBI and U.S.
3 Attorney, mainly in Mississippi.

4 And I was held in MCC in Manhattan for 11 days.
5 Eight days' incarceration, I was just taking water and only
6 water. Then I was moved to Winchester ward -- Winchester Jail
7 where I placed in a ward. And I was fed through my veins in
8 hands and legs for one month. Then they collapsed, the IV
9 couldn't go through. Then they placed the IV in my neck,
10 three stitches without anesthesia. It came out, they push it,
11 and I became infected. It was infected, and I had fever, had
12 infection.

13 Twice, the first time three stitches, but when it
14 came out, they placed two stitches without anesthesia, and
15 they -- after one month it came out and started to feed me
16 again through my vein, in my veins, my hands, on my legs. Two
17 months. Then collapsed. They couldn't -- the IV couldn't go
18 through anymore. They used to place it -- I swear the last
19 one time in three days they tried to place it 50 times, put it
20 forward, backward, to the right, to the left. My veins
21 collapsed.

22 After four months, the judge issued a force order,
23 feeding order, and I was fed from my nose, NG tube from my
24 nose through my throat into my stomach.

25 I was kept in the same room in the same bed with

1 seriously ill patients. Just in one month, in one month two
2 patients, cancer patients, passed away in front of me. And
3 after six weeks, my nose inflamed, my throat inflamed
4 and I placed a request: "Please, feed me with my veins until
5 at least my throat and my nose heals."

6 They said, "You have no say. We have a forced
7 feeding order."

8 I said, "You know, we are human beings. Let's
9 communicate as human beings. It's hurting. It's killing me.
10 I can't tolerate it."

11 You know, because they used to put the medicine in
12 the IV, and it used to clog. Therefore, they used to take it
13 every two days, every three days and replace and I became
14 inflamed.

15 And I said, okay, if you want to place it, go ahead
16 and place it, but over my dead body because I can't take it
17 anymore, and they shackled me. And they start to place the IV
18 into my nose, right nose. It didn't go through and start to
19 bleed. Into my left nose and it came out of my mouth. Then
20 into my right nose. Then into my left nose.

21 Judge -- and they shackled me. They shackled me
22 three weeks. My hands and my legs like that (indicating).
23 After that, after six months, 130 days sharp, the judge
24 released me from civil contempt. And, again, I thought that
25 my ordeal is over and I could go back to live a normal,

1 peaceful life. And still I had no place to go.

2 So, and still, you know, I had the fracture, the
3 muscle diminished, everything, you know. And it took me one
4 year of physical therapy treatment to change the consequences
5 of the hunger strike. And I did manage checkups and I was --
6 up to this moment, I'm still taking medications.

7 I applied for political asylum. In December '98, my
8 visa expired, and I didn't want to stay illegally in this
9 country. And I couldn't leave. I couldn't -- I have no -- I
10 had no place to go.

11 February '99, it was granted, then revoked and
12 referred to an immigration court. The government keep -- kept
13 continuation, continuation until I was not allowed to work for
14 six months. This is, you know, for once anybody applies for
15 political asylum, he cannot work for six months, or he cannot
16 get the work permission after six months until they decide on
17 his -- anyway, they didn't decide.

18 They referred it to an immigration court.
19 Continuation after continuation until at that time I started
20 to work. I worked after I get the work permission, and I
21 didn't want to stay away from my field. I was teaching as
22 adjunct professor at university -- District of Columbia
23 University, Strayer University, and I started to teach at
24 Towson University in Maryland, 80 miles from my home. I got
25 it through some friends. I didn't want to waste the

1 opportunity. I didn't want to stay away from my field. I was
2 driving 80 miles back and forth four days a week on temporary
3 basis until I got a job at Howard University.

4 Anyway, in 2000, I got a job at Howard University.
5 In 2002, in September, 2002, assistant dean of the university,
6 Howard University School of Business, told me, "We know who
7 you are. Someone from Mississippi" -- I don't know who's that
8 person is -- "sent us your file, and we know who you are."

9 I said, "Who from Mississippi sent you my file and
10 why?"

11 He said, "I can't tell you."

12 Anyway, later on they told me we are not going to
13 renew your contract despite a recommendation by the
14 appointment committee to hire me on tenure track. Every three
15 years -- the first of three years on temporary basis, after
16 that on tenure track. The appointment committee fought
17 against one, recommended the appointment, but they told me we
18 are not going to recommend -- we are not going to renew it.
19 I'm sorry.

20 Anyway, the judge -- immigration judge -- set a day
21 for a hearing, final hearing, and he said, "I'm not going to
22 renew it. I'm not going to continue the case." June 16th,
23 2003, and he schedule it for hearing.

24 The FBI provided nine volumes of information, the
25 same volumes that were used in my case, the same -- everything

1 the same by FBI. Judge scheduled six weeks for hearing.
2 Suddenly -- and I'd like everyone to pay attention, your
3 Honor. Your Honor, he scheduled six weeks for a hearing.
4 Suddenly, the FBI presented stipulation: "Stipulate to this
5 and you don't need to testify, they don't need information,
6 they don't need the truth."

7 What are these stipulation? The same thing that they
8 have been asking: To build cases to incriminate some people.
9 To stipulate that Holy Land Foundation is a terrorist
10 organization, IAP -- Islamic Association for Palestine -- is a
11 terrorist organization, so-and-so is a terrorist.
12 Philadelphia meeting is -- was organized by Hamas. Hamas --
13 there's Hamas in the U.S.

14 And I told my attorney, "I think it's time for me to
15 leave. I'm not going to stipulate. I think I can't find any
16 place to go. I can't take it anymore."

17 We sign the agreement to depart voluntarily within
18 two months. In June 16th, 2003, I was served a subpoena to
19 appear in front of grand jury in Chicago, on the same day, to
20 appear on the 18th. And I got the termination of contract
21 from Howard University on the same date, June 16th.

22 Your Honor, it was not enough time. We seek
23 continuation for grand jury appearance, and I was granted
24 until June 25th. But they said you have to call to report to
25 FBI twice a day in Chicago at 10:00 a.m. and 7:00 p.m., not to

1 leave your town. And I abided by the agreement. I was
2 calling in twice. I was calling FBI twice a day, not leaving
3 my town without their permission.

4 And I appeared and took the same stand because I know
5 two things: Number one, this case is initiated by the
6 government of Israel. American security is not the Israeli
7 security. No Palestinian did anything against the security of
8 the U.S. in the U.S.

9 Second, I'm determined to live in honor and dignity.
10 I cannot turn against my people as long as it takes. And I
11 took the same stand. I was held in civil contempt, and I took
12 the same stand not to testify -- not to eat or drink anything,
13 just water, to protest the way I was treated.

14 But this time something happened unusual. Three days
15 after my incarceration, they cut off the water. They kept me
16 in a dry cell from Monday until next Sunday when I was rushed
17 to the hospital -- Bethany Hospital. They took me once to the
18 medical clinic in jail and placed the IV despite my rejection
19 and gave me 300 cc.

20 And after that, the case was moved to your Honor. I
21 was indicted with criminal contempt and later on with
22 obstruction of justice later, then with RICO. And since
23 November 5th -- November 3rd, I'm sorry, 2003, I was placed
24 under some electronic monitoring, started with home arrest,
25 then curfew. Then again I was detained for one month, almost

1 one month. Then released to home incarceration, and I stayed
2 in home incarceration wearing the ankle bracelet from
3 September 15th, 2004, until March 26th this year. And the
4 course of the trial, which is exhaustion of a person
5 financially, emotionally.

6 You don't know what we have been through. And before
7 that, we were struck by another tragedy, stabbing to death of
8 my sister-in-law in New Orleans, Louisiana. We are still
9 living that tragedy, still an open case. No one has been
10 charged. No apprehension. No whatsoever. And we are
11 reminded every day with that tragedy with my sister-in-law's
12 son Ahmed living with us.

13 And I found myself in a place that I couldn't go to
14 New Orleans to help my family through that hard time. I had
15 to stay home. We buried -- they couldn't take even -- we
16 tried to take the body, the coffin to be buried back in
17 homeland in her homeland, but the borders were closed, and we
18 couldn't do that.

19 Your Honor, I think -- I did what I did. I'm taking
20 responsibility what I did. And if I'm going to test- -- if
21 I'm -- they are going to subpoena me again, I'm going to take
22 the same stand. I'm not going to turn or to take the stand
23 and testify against people, my people. I'm not going to help
24 anybody build cases, incriminate my people, as long as it
25 takes.

1 But I'm a Palestinian. I'm not an American. I have
2 a commitment towards my people. And I never hurt anyone or
3 knew of anyone would do anything against the U.S. and held
4 that information. But to designate my people and go after
5 them for the sake of the Israelis, I think something -- not
6 me, every Palestinian would not do.

7 Your Honor, I think we have been through too much,
8 beyond the comprehension of any human being. When I came to
9 this country, the first thing I did, to get a driver's license
10 because I didn't have a driver's license because to get a
11 driver's license, you have to get clearance from security, and
12 I was denied that.

13 Second thing, I kept records of everything and for
14 the first time in my life I have appointment book. And I
15 started to keep, which turned to be -- then to be called
16 documents afterwards. I had the appointment book, '90, '91,
17 '92, '93, almost 1400 pages out of 1600 pages to be called
18 documents.

19 The first time my wife joined me after she finished
20 her degree in March '90, she said, "This is the first time in
21 my life almost to live to feel peace and to feel in peace and
22 security and tranquility."

23 We used to sleep in our clothes because we expected
24 the raid of the Israelis any time to detain us. And they
25 could break the door without any notice. So, we used to sleep

1 in our clothes.

2 "This is the first time." That's her statement.

3 Your Honor, I think it's time for me to pick up
4 what's left in my life to live in peace, harmony, dignity, and
5 to join my family back at home. I have been out of this --
6 out of my homeland 18 years and six days -- five days, I'm
7 sorry. My brothers get married. I don't know his kids.
8 Many, many nephews. Many nieces got married. Many cousins.
9 I don't know anyone. Those who I mentioned were murdered or
10 detained. I don't know. They were in the early 20s. When I
11 left, some of them were two years, three years, four years
12 old. I don't recall all of them. I don't remember all of
13 them.

14 Although my tale of pain and suffering would not end.
15 I don't know where to go if I'm going to be granted status to
16 stay or not or the Israelis would go after me.

17 All documents that was taken from my home was used
18 against my people back at home. Since '92 has been used. And
19 if I went through what I have been through in this country,
20 then you can imagine what would happen to me if I go back.

21 Your Honor, thank you for your understanding and for
22 your patience. This is the first time to have an opportunity
23 to tell my story.

24 Thank you.

25 THE COURT: Thank you, Dr. Ashqar.

1 THE DEFENDANT: Your Honor, before you move, can I
2 just thank -- I'm sorry, I forgot to thank my counsels, my
3 legal counsel Bill Moffitt, his wife Edna Moffitt, for working
4 hard on my case, for their help and understanding and, more
5 importantly, believing in me.

6 Also, to thank Mr. Keith Spielfogel, Professor Andrea
7 Lyon and anyone -- and Sean and everyone who worked in my
8 case.

9 Also, I'd like to thank the community for supporting
10 me, who stood up for me and believing in me and trusting my
11 brothers and sisters. You are supporting a cause of freedom
12 and justice. Helping the Palestinian people is supporting a
13 cause of freedom and justice.

14 Also, I'd like to thank my wife who has been through
15 this with me. We got married; after two months, I was
16 threatened with being deported by the Israelis. My nephew,
17 Ahmed Muhammad, and my mother-in-law has been captive with me.
18 She couldn't leave. And now things will not be the same for
19 us until we have a grave.

20 Thank you.

21 THE COURT: The sentencing guidelines, as the Court
22 has already addressed, there's a range of 210 to 262 months.
23 The guidelines are advisory. In fashioning the sentence in
24 this case, as the Court is directed to do so by the Supreme
25 Court and the Seventh Circuit, the Court looks to Section 3553

1 and the factors in Section 3553.

2 The sentence that the Court is going to impose is
3 based upon those factors and will satisfy and address the
4 factors in Section 3553. The first factor the Court must look
5 at under 3553(a)(1), the nature and circumstances of the
6 offense and the history and characteristics of the defendant.

7 Refusing to testify before the grand jury after you
8 have been immunized and compelled to do so is a serious
9 offense. The grand jury process in this country is essential
10 to obtain information for law enforcement and for our country.

11 I strongly disagree with your statement, Mr. Moffitt,
12 that Dr. Ashqar had no duty to the United States. When living
13 in this country, you have a duty and an obligation to follow
14 the laws and comply with the laws or suffer the consequences.

15 Part of the honor and dignity in living in this
16 country is abiding by those laws and complying with those
17 laws. Refusing to comply with the court order and failing to
18 testify before the grand jury is a very serious offense.

19 In looking at the nature and circumstances of the
20 offense, I note, however, that there is no evidence that you,
21 yourself, Dr. Ashqar, have ever participated in any violent
22 acts or intended to do so. There also has not been any
23 evidence in this case that the terrorist activities that were
24 under investigation by the grand jury were directed at the
25 United States.

1 In looking at your history and characteristics,
2 Dr. Ashqar -- and I have reviewed all of the letters,
3 Mr. Moffitt, that you have provided to the Court, but I'm also
4 looking at the evidence that has been provided to this Court
5 during the course of the trial and through the sentencing
6 hearing and through Dr. Ashqar's own statements today. I
7 respect that you want to support your family members,
8 Dr. Ashqar, but when you're in this country, you must do it
9 legally, and refusing to testify before the grand jury when
10 you've been immunized and compelled to do so is not doing it
11 legally.

12 And you, yourself, told the grand jury, "I will never
13 give evidence or cooperate in any way with the grand jury or
14 any other, no matter what the consequences to me," and there
15 are consequences.

16 I reiterate what I said before, though. There is no
17 evidence that you have participated in any violent acts. You
18 do not have a criminal history. You have not been convicted
19 other than in this action of any crimes before coming here.
20 So, I take all of that into consideration.

21 One other thing I do note in looking at your history
22 and characteristics, although you indicated that you are
23 accepting responsibility for your actions, in the
24 hour-and-a-half plus that you have spoken, I have not seen any
25 remorse from you for the crime that you committed here.

1 I also heard from you exactly the opposite, that if
2 you were in the same situation again, that you would do the
3 exact same thing and refuse to testify before the grand jury.

4 The sentence that the Court is going to impose will
5 reflect the seriousness of the offense of conviction here, the
6 obstruction of justice and the contempt. It will promote
7 respect for the law.

8 Mr. Moffitt, you argued that a lengthy sentence would
9 be contrary to the principles of liberty and justice that this
10 country was founded upon. The exact opposite is true. The
11 ability of the government to prosecute cases depends upon
12 truthful testimony before the grand jury. It is not up to any
13 one individual to decide if they agree with the grand jury,
14 disagree with the grand jury, if they can protect people.

15 When a witness has been immunized and compelled to
16 testify before a grand jury, he cannot deliberately ignore
17 that order and interfere with the law enforcement process
18 without consequences. And that is certainly true where a
19 grand jury is investigating terrorist activities.

20 Those actions undermine a critical part of our
21 investigatory process and our prosecutorial process in the
22 United States. In providing -- the sentence the Court is
23 going to impose will provide just punishment for the offense.
24 It will also provide adequate deterrence to criminal conduct
25 of others. It is essential to send a message that you cannot

1 walk into grand juries when you've been immunized and
2 compelled to do so and say I'm going to take things into my
3 own hands, and I'm not going to do that. You cannot do that
4 without significant consequences.

5 In terms of protecting the public from further crimes
6 of you, you refused to testify in New York. You refused to
7 testify in Chicago. You have disregarded your legal
8 obligations of living in this country.

9 Having said that, I'm not sure that any sentence the
10 Court would impose would ever deter you from refusing to
11 testify again. I just don't think you would ever do that,
12 Dr. Ashqar, based upon on your own statements today and
13 everything that the Court has seen.

14 The final factor in Section 3553 is to provide the
15 defendant with needed educational or vocational training. I
16 don't really think that is a factor here.

17 There is a criminal offense level of 32 and a
18 Criminal History Category of VI, as the Court has previously
19 said. For alternate reasons, looking at Category VI and
20 guideline 4A1.3(b)(1), I do think that substantially
21 over-represents the seriousness of your criminal history in
22 this case. You have no convictions other than the one before
23 this Court. You have not been arrested. A Category VI
24 significantly and substantially over-represents that.

25 Based upon everything that the Court has seen, I

1 think a Category I is more appropriate, and my sentence will
2 reflect a guideline offense level of 32 with a Criminal
3 History Category of I, which has a 121-to-151-month guideline
4 range.

5 For all of the factors in Section 3553, that I have
6 just given, even if the Court should not have a Criminal
7 History Category of I, even if the category of VI is more
8 appropriate, under the Section 3553 factors, I would deviate
9 from the Category VI guideline range to the guideline range
10 that I have just noted.

11 For all of those reasons, pursuant to the Sentencing
12 Reform Act of 1984, Dr. Ashqar, it is the judgment of the
13 Court that you are hereby committed to the custody of the
14 Bureau of Prisons to serve a term of imprisonment of 135
15 months on Counts Four and Five of the second superseding
16 indictment.

17 You must pay a \$100 special assessment on each count
18 of conviction for a total of \$200. I am also imposing a fine
19 of \$5,000.

20 Upon your release from imprisonment, you shall be
21 placed on supervised release for a term of two years on each
22 count to run concurrent.

23 Within 72 hours of your release from the custody of
24 the Bureau of Prisons, you shall report in person to the
25 probation office in the district to which you are released.

1 While on supervision, you shall not commit another
2 federal, state or local crime. You shall comply with the
3 standard conditions that have been adopted by this Court and
4 also comply with the following additional conditions:

5 You shall not possess a firearm or a destructive
6 device.

7 You shall refrain from any unlawful use of a
8 controlled substance.

9 You shall submit to one drug test within 15 days of
10 your release from imprisonment and random drug tests
11 thereafter not to exceed 104 tests per year, as conducted and
12 directed by the U.S. Probation Office.

13 You shall cooperate in the collection of a DNA sample
14 to the extent one is authorized by the law.

15 In addition, you shall comply with the following
16 special conditions:

17 Upon completion of your imprisonment, you are to
18 surrender to a duly authorized official of the Homeland
19 Security Department for a determination on the issue of your
20 deportability by the appropriate authority in accordance with
21 the laws under the Immigration and Nationality Act and the
22 established implementing regulations.

23 If ordered deported, Dr. Ashqar, you shall not
24 re-enter the United States without obtaining in advance the
25 express written consent of the Attorney General or the

1 Secretary of the Department of Homeland Security.

2 I am going to waive the costs of incarceration and
3 supervision based on your limited ability to pay.

4 You have the right to appeal your conviction in this
5 case, Dr. Ashqar, as well as the sentence that has been
6 imposed by the Court. If you wish to do so, you must file a
7 notice of appeal with the Seventh Circuit within ten days, and
8 you can talk to Mr. Moffitt about how to go about doing that.

9 Is there anything further?

10 MR. SCHAR: Several things, Judge. On Counts Four
11 and Five, the statutory max on Count Four is 120 months. I'm
12 not sure if Count five is 135 or simply additional time to run
13 consecutive.

14 THE COURT: Thank you for clarifying that.

15 Count Four is the contempt which does have the
16 statutory maximum. I will --

17 MR. SCHAR: The obstruction has that.

18 THE COURT: I'm sorry?

19 MR. SCHAR: The obstruction has the statutory.

20 THE COURT: Has the statutory maximum, which is
21 Count -- Count -- because of the -- it was Three and Four at
22 the time it went to trial. Under the second superseding
23 indictment, it's Four and Five. Five is the obstruction with
24 the 120 months.

25 So, I'm sentencing you on Count Four to the 135

1 months, and the sentence on Count Five is 120 months to run
2 concurrent with the sentence on Count Four of the second
3 superseding indictment.

4 I think it's a ten-year statutory cap, not a five.

5 MR. SCHAR: Yes, ten, years, Judge.

6 THE COURT: Okay. Is there anything further?

7 MR. MOFFITT: Your Honor --

8 THE COURT: Mr. Moffitt?

9 MR. MOFFITT: Yes. I would ask that Dr. Ashqar be
10 allowed to self-surrender.

11 MR. SCHAR: Judge -- I'm sorry, go ahead. There is
12 one other issue before we get to that issue because the
13 government does have an opinion on that. I'm not sure you set
14 a fine schedule, which I think is now required pursuant to
15 Seventh Circuit law.

16 THE COURT: Any fine that remains unpaid at the time
17 of supervised release will become a condition of supervised
18 release to be paid in the amount of 10 percent of the
19 defendant's gross net income -- gross income.

20 Thank you.

21 MR. SCHAR: Yes, Judge.

22 THE COURT: Yes.

23 MR. MOFFITT: He is currently still on bond. He has
24 appeared timely at every -- on occasion that he's been
25 required to. We're not -- we're not asking for a long period

1 of time.

2 THE COURT: What are you asking for, Mr. Moffitt?

3 MR. MOFFITT: I would like to ask for 45 days so he
4 might be able to spend the last of the holiday season with his
5 family.

6 MR. SCHAR: Judge, our position is under 3143 remand
7 is required. I would note he's not on electronic monitoring
8 anymore, and I would also note repeatedly throughout his
9 statements, he indicated a willingness and wish to leave the
10 country.

11 He's under an order, essentially agreed order, of
12 deportation, and now the reality is he's looking at over ten
13 years in the federal penitentiary, and his reasons for fleeing
14 have gotten significant as this reality has now struck. And
15 we would ask that he be remanded immediately.

16 MR. MOFFITT: He was looking at life imprisonment at
17 one point. He returned every time. He came to hearings that
18 he wasn't even required to come. This is a man who I would
19 suggest to you from everything that he has told you carries
20 with him the notion that the dignity of his people is
21 important.

22 I would suggest that it would be against his nature
23 at this particular point to run in the face of this. If he
24 was going to run, he certainly would have run when we got the
25 probation report and it said that he was facing life. I mean,

1 the reality that he was facing jail time has been a reality
2 that he certainly faced up to long before this.

3 And certainly Mr. Salah was allowed to surrender
4 himself. I don't see where Dr. Ashqar, in light of the fact
5 that there's no violence in his history, is any different.

6 THE COURT: I don't think you can compare this case
7 to Mr. Salah's case. He was convicted of different charges
8 and facing different guidelines and had some very, very strong
9 community ties to Chicago. So, I don't think you --

10 MR. MOFFITT: Well --

11 THE COURT: -- can compare this case to his case.

12 MR. MOFFITT: -- I would suggest to you that he has
13 community ties. Some of them are in the courtroom, and we're
14 not asking for a long period of time.

15 MR. SCHAR: Judge, I think we're talking about a
16 significant period of incarceration. The statute's fairly
17 clear in this regard. It's not a danger-to-the-community
18 issue. It's simply a risk-of-flight issue at this point.

19 There are no significant appellate issues, your
20 Honor, from the government's view, nor is there clear and
21 convincing evidence that he is not a risk of flight at this
22 point. Again, he's not on any type of monitoring, and he has
23 every reason to leave the country and not face this sentence
24 and continue to feel currently very strongly about, which is
25 his fight for the Palestinian people.

1 MR. MOFFITT: Where does he go? He has no passport.
2 There's no place for him to go.

3 THE COURT: In looking at Section 3143, the statute
4 directs that the defendant be taken into custody unless the
5 Court finds by clear and convincing evidence that he is not
6 likely to flee or to pose a danger to the safety of any other
7 person or the community.

8 I agree, I don't think Dr. Ashqar is a danger to the
9 community. However, I do not find by clear and convincing
10 evidence that he's not likely to flee.

11 He's facing a substantial sentence. I am concerned
12 by statements that he himself has made, that you want to
13 return, you're trying to return. I am concerned that -- at
14 your lack of remorse for what has happened here. I am
15 concerned that you've indicated you'd go out and commit the
16 same crime again.

17 For all of those reasons, there is not clear and
18 convincing evidence, as required by the statute, and I will
19 order that the defendant be taken into custody.

20 MR. SCHAR: Thank you, Judge.

21 THE COURT: Is there anything further?

22 MR. SCHAR: No, Judge.

23 THE COURT: Thank you.

24 (Which were all the proceedings heard.)
25

CERTIFICATE

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/Joseph Rickhoff

September 3, 2008

Joseph Rickhoff
Official Court Reporter

Date